

THE DEVOLUTION OF GOVERNMENT IN SRI LANKA:LEGAL ASPECTS
OF THE RELATIONSHIP BETWEEN CENTRAL AND LOCAL GOVERNMENT;
AN HISTORICAL AND COMPARATIVE STUDY

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Abstract

In the context of recently accentuated communal divisions in Sri Lanka, the thesis seeks to examine how far present schemes for the decentralisation of Government provide for a degree of local autonomy which may be sufficient to accomodate divisive and secessionist tendencies. The question is approached through an analysis of the legal elements in the relationships between the central and local government authorities, traced through the historical evolution of the law from ancient times and specially from the early colonial period.

The thesis contains eleven Chapters including a general introduction and a conclusion and is divided into three parts. Part One examines the historical aspect of the central-local government relations, with special reference to developments in relations during the colonial and the independence periods. Part Two discusses the legal aspects of the relationship between the Central Government and local authorities, while the era of decentralised administration, and the developments which it introduced in central-local government relations are evaluated in Part Three.

The second Chapter attempts to analyse the relationship which existed between the ancient Central Government and local government institutions, such as the Gamsabhawas (Village Councils) and the Rata Sabhawas (District Councils). Chapter Three discusses the developments in central-

local government relations as well as in local government institutions during the period 1856 to 1928; while Chapter Four is mainly based on an analysis of the developments during 1928 to 1948 and in the aftermath of independence. The fifth Chapter analyses the powers of the Central Government of the country during this latter period.

In Part Two legal aspects of the relationship are discussed. Chapter Six examines the role of the administration with regard to the Central Government and the local authorities of the country while Chapter Seven analyses the role of the courts in central-local government relations. Chapter Eight discusses the impact of finance in central-local government relations.

The final Part, which discusses the current era of decentralised administration in Sri Lanka, demonstrates analytically the various political attitudes towards the decentralisation of the administration and the establishment of Development Councils in 1981. The extent of decentralisation in the field of local government by the introduction of Development Councils is assessed and it is argued that the newly introduced Development Councils are under the direct control of the Central Government. An attempt is made to identify the role of the Development Councils in strengthening the relations between the majority Sinhalese and the minority Tamils in the island; the conclusion is that these Councils could contribute significantly to the improvement of communal

relations if the Government sees fit to grant them the full measure of powers anticipated by the legislature.

Some minor reforms are identified as essential for the creation of better relations between the Central Government and the local authorities in Sri Lanka.

The thesis is mostly based on Sri Lankan experience. However, when appropriate, it has analysed comparatively the particular aspects of local government in other countries, especially in England and India.

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PART ONE

THE DEVOLUTION OF GOVERNMENT: ANCIENT TO THE MODERN PERIOD

Chapter One

Introduction

Discussing the development of the laws and Constitutions in Ceylon, Sir Ivor Jennings and Professor H.W. Tambiah pointed out:

"Generally, local government plays a much less important part than in most developed countries and local government law is not an important branch of the laws of the island".¹

In view of this authoritative remark it may well be asked whether a research on Local Government Law is justified. However, it is our opinion that local government institutions are vitally important under the prevailing circumstances of the country and for its future development. Moreover, it is clear that the whole question with regard to local government has been given a new introduction since the establishment of Development Councils, under the Development Councils Act, No. 35 of 1980. Thus, it is quite obvious that it is necessary to examine the relations between the Central Government and local authorities of the country, to identify the possibilities for a successful devolution of the Government in Sri Lanka. Hence, in this thesis an attempt has been made to analyse the legal aspects of the relationship between the Central Government and local authorities of the country, with reference to the devolution of the Government. In this introduction it is intended to provide some basic information with regard to the country, the research and the thesis.

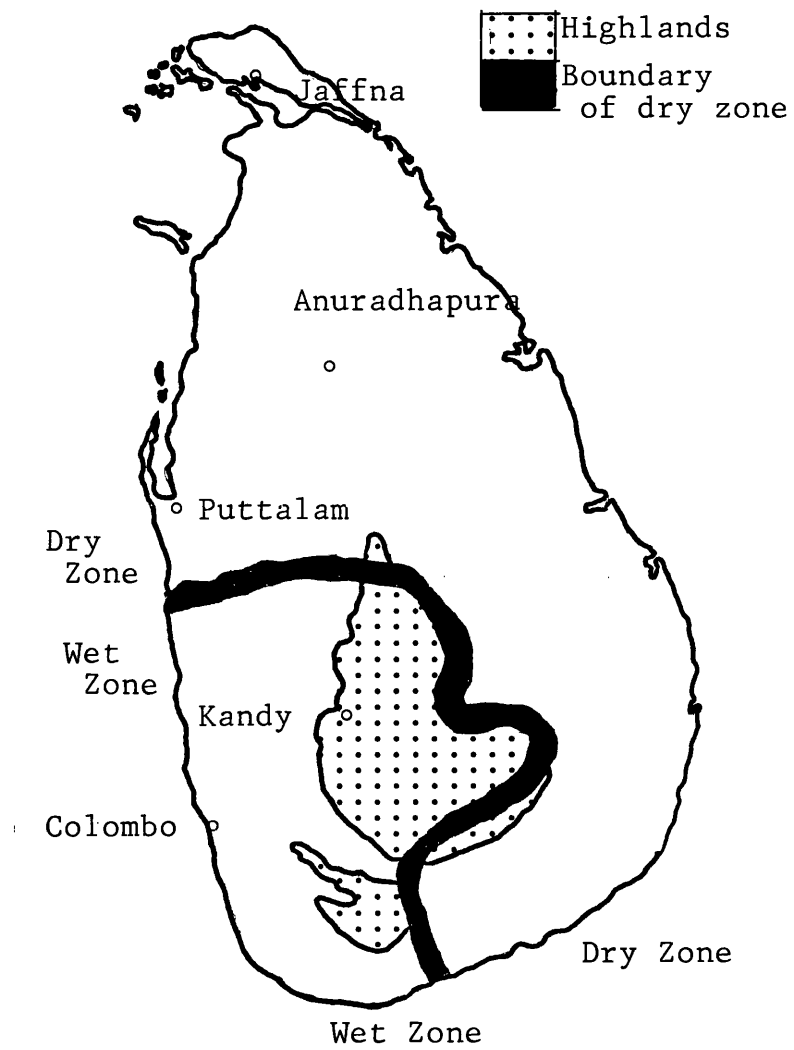
1. Sir Ivor Jennings and Professor H.W. Tambiah, The British Commonwealth: The development of its Laws and Constitutions Volume 7, Ceylon, London, Stevens and Sons Ltd., 1952, p. 81.

I.Sri Lanka

1.Its situation,area and climate

Sri Lanka, or as it was known to the outside world for many centuries,Ceylon,is an island located slightly north of the equator and separated from the sub-continent of India by a narrow and small strip of sea,the Palk Strait, which is only about twenty-five miles in width in its narrowest point. It is a small island with an extent of 25,332 square miles, nearly the same as that of Holland or about half of the size of England. The island's greatest length from north to south,i.e. Point Pedro to Dondra Head, is about two hundred and seventy miles and its greatest width is one hundred and forty miles from Colombo on the west coast to Sangamankanda on the east.

Geographically,the country could be divided into two parts, the hill country and flat lands.A mountainous core in the south-central part of the island contains elevations of between 3,000 and 8,000 feet,with the highest peak reaching more than 8,000 feet. From this mountainous core,the elevation falls to a coastal plain and approximately four fifths of the island's area consists of flat land. The country enjoys a great variety of climatic conditions,owing to differences of elevation and rainfall. It is dependent for rain on the north-east monsoon from October to March and on the south-west monsoon from April to September. The rainfall varies from twenty-five inches



Map I - Geographical segmentation of the country

Source: Department of Local Government, Colombo

to two hundred inches a year,thus,dividing the country into two zones as shown in Map I,the wet and dry zones.The hottest months of the year are from February to May; the coldest December and January. However, the variations in temparature are minor and there are no well-marked seasons. In the flat coastal areas,which are commonly known as the low-country, the average mean temperature ranges from 79° to 82°F,while in the mountainous areas in the interior,known as the upcountry,the temperature varies from 58° to 75°F.

The wet zone, lush and humid,includes the south-western coastal plain and the western portion of the central highlands. On the other hand, the northern, north-central and the eastern portions comprise the dry zone of the island. Half of the country's land area is covered by woodlands and grasslands.The cultivation of Tea,Rubber and Coconut,which are the major export products of the island, occupies approximately eleven percent of the land,while Paddy cultivation accounts for about eight percent. Over fifteen percent is used for other crops,such as Cinnamon and Cocoa and gardens and orchards too account for about nine percent.The remaining fifty-seven percent of land is either utilized for industrial or residential purposes,or remains unused. Thus, it is clear that,other than in the thickly populated Western Province,so far there has been no problem of land pressure in most parts of the country.

2 Population, population density and ethnic and religious composition

Sri Lanka is a multi-racial and multi-religious nation. According to the census in March 1981, the total population of the island is 14,850,001.

Two-thirds of the island's population live in the wet zone where the density of population averages more than 1,000 persons per square mile and reaches 3,374 in the Colombo district. In other places the population density ranges from 728 to 70 persons per square mile, depending on the geographical and climatic conditions. For instance, in the Jaffna district of the northern tip of the island, the population density marks just over 728, while in the north eastern district of Vavuniya it is less than 70. The majority of the people in Sri Lanka are rural villagers involved in agriculture and other activities such as hunting, forestry and fishing. More than three quarters of the entire population live in rural areas.

It is significant to identify that the island is a multi-racial and a multi-religious nation. The composition of the population according to the race, tabulated below, demonstrates clearly that the ethnic and religious divisions are of significant importance to social, political and cultural affairs of the island.

=====		
Sinhalese	10,985,666	73.98%
Tamils	1,871,535	12.60%
Moors	1,056,972	7.12%
Indian Tamils	825,233	5.56%
Malays	43,378	0.29%
Burghers	38,236	0.26%
Others	28,981	0.20%
	<hr/>	
	14,850,001	

TABLE I - The composition of the population
according to race

Source: Statistical Abstract, 1981, published by the Government
of Sri Lanka

=====

Among these various kinds of ethnic and linguistic groups into which the population is divided, the Sinhalese comprise the overwhelming majority. The Sinhalese population in the island are descendants of Aryans who came to the island from North India in about the fifth century B.C. The Sinhala people, most of whom are Buddhists, have their own language, which is also known as the Sinhala language and Sri Lanka is the only country in the world which uses this language. The Sinhala community in Sri Lanka is divided into two categories, the Kandyan Sinhalese and the low-country Sinhalese. The division has been purely based on the geographical segmentation of the country. The Sinhala people who lived in the centre of the country as well as in the northern part of it were known as Kandyans and those who lived in southern parts and the coastal areas were known as low-country Sinhalese.

The Tamils, who are descendants of early Dravidians, are second in strength to the Sinhalese. They are immigrants from South India who have been living in the country for several centuries. They are predominantly Hindu and speak Tamil, which is one of the major languages of South India. This emphasises the fact that they are culturally distinct from the Sinhalese majority. Out of the 1,871,535 Tamils, only 792,246 live in Jaffna, and all others live in other parts of the island, among the Sinhala people.

Other than the Ceylon Tamils, there is a small percentage of Indian Tamils in the country. They are the people who migrated from India for estate labour during the British period and most of them live in the tea-growing areas of the central highlands.

The Muslims and the Burghers could be identified as minority groups. The Burghers are the descendants of the European officers who resided in the country during the Portuguese, the Dutch and the British periods; and especially of the Dutch who came to work in the East India Company. The Muslim settlements in Sri Lanka are older, claiming from around the tenth century A.D. Most of them were traders who were very popular among the villagers.

II. The role of local government in Sri Lanka

Sri Lanka is a "Free, Sovereign Independent and Democratic Socialist Republic"² within the Commonwealth of nations, with an elected executive President with substantial

2. The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Article 1.

powers. In accordance with the Constitution of the Republic of Sri Lanka, sovereignty is in the people and is inalienable.³ Article 4 of the Constitution provides:

- "The sovereignty of the People shall be exercised and enjoyed in the following manner.
- a) the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum;
 - b) the executive power of the People, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the People;
 - c) the judicial power of the People shall be exercised by Parliament through courts, tribunals and institutions created and established or recognized, by the Constitution, or created and established by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its members, wherein the judicial power of the People may be exercised directly by Parliament according to law".

However, it is interesting to note that the Constitution has no provision with regard to the role of the local government in relation to the administration of the country. Article 20 of the 1978 Constitution states:

"A member of Parliament or a member of a local authority shall be entitled to perform his duties and discharge his functions in Parliament or in such local authority in either of the National Languages".

Under the interpretation^{provisions} of the Constitution states:

"local authority means any Municipal Council, Urban Council, Town Council or Village Council and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such council".⁴

3. ibid., Article 3

4. ibid., Chapter XXII.

Other than these provisions, there is no mention in the Constitution with regard to the powers, functions and duties of local authorities and especially in connection to the role which is attributed to local councils in the administrative structure.

Under the present Constitution, it is apparent that Sri Lanka needs a system of local government, which can play a significant role, along side the Central Government. However, an examination of the administrative structure, demonstrates that Sri Lanka has a highly centralised system of administration. All the important services such as education, health, police and transport are solely carried out by the Central Government and the local authorities are empowered to carry out functions such as sanitation, water services and the maintenance of minor roads. Moreover, as will be apparent later, the local authorities are under the control of the politicians as well as the bureaucrats. Whilst, the Minister of Local Government's powers extend to the extreme of dissolving the local authorities whenever he feels necessary, the administrators are empowered to supervise the administration of these councils. Thus, it is clear that the bureaucracy at the centre has the ultimate authority over the local councils. The word "bureaucracy" which means "the Government by central administration" is used throughout this thesis in relation to local government, to emphasise that the local authorities are highly influenced by the central administration. This emphasises the fact the local authorities in Sri Lanka are more or less under the direct control of the Central

Government, instead of being independent councils, with elected members as the representatives of the people. Discussing the position of local authorities in England, George Jones and John Stewart points out:

"[Local government] should be a guardian of fundamental values. It represents first and foremost a spread of political power. Power is diffused among many different organisations.. Local authorities are, however, the only institution other than the House of Commons within the country that can claim the authority that comes from election. Local authorities can represent the dispersio^g of legitimate political power in our society".⁵

This emphasises the belief that local authorities in a country could share the functions of the Central Government, especially as the local councils could involve themselves with many decision-makers in numerous different localities. As the Layfield Report stated in 1976, the most important question with regard to central and local government is "whether all important governmental decisions affecting people's lives and livelihood should be taken in one place on the basis of national policies or whether many of the decisions could not as well or better be taken in different places, by people of diverse experience, associations, backgrounds and political persuasion".⁶

Simultaneously, it is important to analyse the questions with regard to the relationship between the Central Government and local authorities of the country, especially in connection to a decision for a devolution of the Government. These questions are vitally important with

5. George Jones and John Stewart, The case for local government, Second Edition, George Allen and Unwin, 1985, p. 5

6. Report of the Committee of Inquiry into Local Government Finance, Chairman: F. Layfield, Cmd. 6453, 1976, p. 299.

regard to the present situation in Sri Lanka. As will be discussed in greater detail later, some of the minority Tamil population have^{being}/for sometime fighting for a separate State, and since of late this has provoked a major crisis in the country with serious security problems. An alternative solution to this vital question is the devolution of the Government within a unitary State, principally by granting more power to the already established District Councils or by introducing Provincial Councils. However, it could be said that the success of devolution of the Government will depend mostly on the amount of powers attributed to local authorities especially, with regard to matters such as decision-making and policy discretion. For this reason the most important factor to be examined in this thesis is the relationship between the Central Government and local authorities of the island.

Thus, in this thesis, we shall be focussing our attention upon a few important questions with regard to the relationship between the Central Government and local authorities of the country, and the devolution of Government. As will be apparent later, it is clear that until the establishment of the Development Councils in 1980, the administration at the local level was not decentralized. This piece of information emphasises the fact that, prior to 1980, the authority of the Central Government was not delegated to the local authorities of the island. Discussing the norms of decentralisation and their effects, B.C. Smith points out:

"Decentralization involves the delegation of authority. Such delegated authority may be broadly classified as either political or bureaucratic. Political authority is delegated when power is devolved through legislative enactment to an area Government(as in a Unitary State) or allocated between national and area Governments by the Constitution (as in a Federal State). Such delegation creates political institutions (usually formed by the application of democratic principles though with varying structures) with the right to make policies for their areas over which they have jurisdiction. Area Governments or authorities thereby acquire a measure of autonomy. They exercise powers which fall within their jurisdiction.They gain legitimacy from the unique local political system over which each Government exercises some jurisdiction".⁷

Thus,it is clear that there are two important features to be analysed.Firstly, the status of local authorities prior to the establishment of Development Councils in 1980. Secondly,the extent of decentralisation carried out under the Development Councils Act. The questions which will arise under these concepts and which will be examined in this thesis could be summarised as follows:

- 1.To what extent do the local authoriries function as autonomous entities?
 - i.Has the Central Government acquired too many powers to control the local authorities?
 - ii.Has the judiciary any authority to intervene with local authority affairs?
- 2.To what extent has Sri Lanka been successful in decentralising the administration under the programme adopted since 1980?
 - i.Does this represent a fundamental change of direction in administration?
 - ii.Has it given local authoritities greater autonomy at the expense of central control?
 - iii.Has it given the people,greater participation in self-government?

7.B.C.Smith,Decentralization,George Allen and Unwin,London, 1985,pp.8-9.

III.Sources

The analysis of these questions is based mostly on primary sources, such as legislation and case law, official records and publications, parliamentary proceedings, newspaper articles, Sessional Papers and personal interviews. However, some secondary materials too were examined for this purpose. With regard to local government in Sri Lanka it should be noted that there is a great scarcity of publications of any sort. It should be mentioned at this point that previously, no lawyer appears to have undertaken any research in the field of Local Government Law. Therefore, even among the very few books on local government in Sri Lanka, there is no legal study. Thus, it could be said that this is the first time that a study has been carried out on local government in Sri Lanka, from the perspective of the law.

In relation to the material for this research a few interesting points which had to be faced, could be mentioned. Firstly, the most fascinating feature was the difficulty in extracting the local government material from the various volumes on Constitutional Law. Especially, with regard to the Colonial Office documents, the material in connection with Local Government Law is mingled with the Constitutional Law documents. Thus, to extract the interesting and informative local government material from the old Colonial Office documents was an interesting, but painstaking and a time-consuming task. Secondly, another significant

feature was the difficulty in getting current statistical data from the Local Government Department in Colombo. Most of the available statistics on Local Government are outdated and, the explanation of the Department of Local Government in Colombo is that the suburban local authorities are taking no interest in sending the necessary information within the given period. For instance, in 1983, out of the twenty-four Annual Development Plans, only one was available in the Department of Local Government. The officer, who was in charge of the subject, made it clear that there have been no replies to the many reminders he has sent to the Development Councils throughout the island.⁸ Throughout this research, the lack of essential recent statistics made it difficult to analyse certain important issues with regard to central and local relations.

IV. The organization

Thus, an attempt has been made in this work to analyse the legal aspects of the relationship between the Central Government and the local authorities in Sri Lanka. The above mentioned questions are approached under three different sections. In Part One, it is intended to analyse the historical perspective, with regard to the central-local relations. The early system of local government in the island, and the relations which existed between the Central Government and the ancient local government systems, have been closely examined, in spite of the scarcity in relevant material. The

8. Personal interview, Department of Local Government, Colombo.

beginnings of modern local government during the mid 19th century, and its developments from then upto the present time, are closely analysed to identify the nature of the relationships between the central and local government and such variations in these relationships, during the Colonial period. Attention is also drawn to the powers and functions of the Central Government, to identify the extent of centralisation and the influence of the bureaucracy in Sri Lanka. The analysis of the role of the Central Government is mostly based on first-hand information extracted through personal interviews with senior Government officials.⁹

Different facets of control by the Central Government over the local authorities are observed in Part Two. The role of the courts, the authority of the Minister and the financial implications in central-local relations are discussed in detail in this section, under three different Chapters. These have been the most prominent issues in connection with central-local government relations.

In the final part, we focus our attention on the crucial problem of decentralization in Sri Lanka. Here we evaluate the past and present attempts to decentralize the administration of the country, the set-backs and successes. An attempt has also been made to examine, whether the Government's approach in establishing Development Councils to decentralize the administration is sufficiently far-reaching to solve the present problems in the island.

9. Infra, Chapter Five.

It is not necessary at this juncture to emphasise the difficulties in determining the relationship that should exist between the Central Government and the local government institutions. Describing this factor, Rhodes mentioned:

"On a bitter Winter's day, two porcupines moved together to keep warm; soon hurt each other with their quills, so they moved apart only to find themselves freezing again. The poor porcupines moved back and forth freezing and hurting until they finally found the optimum distance at which they could huddle in warmth and yet, not pain each other too much".¹⁰

Similarly, an attempt is made in this thesis to find the optimum distance between Central Government and the local government institutions, which will devolve sufficient power among the people of Sri Lanka, for all of them to live in peace and harmony.

10. R.A.W. Rhodes, Control and power in central-local government relations, Gower Publishing Company, 1981, p.14.

Chapter Two

Prelude to the beginning of modern local government in

Ceylon/Sri Lanka

Hart and Garner, discussing local government and administration in England stated:

"Whatever attempts are made to define local government, ultimately we must recognise that its sphere, and even the meaning of the term in England, are not to be discovered by any a priori definition. Rather the true method of approach to an understanding of the English system of local government is by way of its history. . . ."¹

Correspondingly, it could be argued that to discover the relationship between the Central Government and local authorities of the island, it is essential to analyse the ancient system of local government in Ceylon and the attitude of the Central Government towards these local authorities of the country during the ancient period. Undoubtedly this will enable us, not only to identify the central-local relations which existed during the ancient period, but also to examine the modifications of central-local relations during the colonial and independence periods, which will be discussed in forthcoming Chapters. Moreover, this discussion will pave the way for a comparison of central-local relations during the ancient, colonial and post-independence periods of the country.

1. Sir W.O. Hart and Professor J.F. Garner, Hart's introduction to the law of local government and administration, 9th edition, Butterworths, London, 1973, p.8.

Consequently, it is intended to analyse in this chapter the early relations between the Central Government and local authorities of the country. This question is approached through an examination of the structure of local and Central Government of the country prior to 1856. As has been discussed in the first Chapter, since the island experienced three different systems of foreign administration in addition to the native administration during the period under review, the structure of central and local governments in ancient Ceylon and the relations between them must be discussed under each different system of administration.

Accordingly, part one of this Chapter will examine the central-local relations during the ancient period, while in part two the Portuguese, Dutch and the early British regimes will be discussed. The discussion on the early British period will especially provide a prologue to Chapter Three, which will examine in detail the developments in central-local relations during the British period. It must be noted at this point, that information regarding the structure of central and local government in ancient

Ceylon is very scarce. As the Report of the Commission on Local Government, commonly known as the Choksy Commission,² which reported in 1955, pointed out:

"Unfortunately there has yet not been sufficient research in this field of study to enable us to present even briefly an authoritative and accurate picture of the system of local government which existed in ancient, mediaeval, Portuguese, Dutch and early British periods of our history."³

It is interesting to note that this statement remains substantially true even today. Hence, the only available sources in this matter are the ancient inscriptions of Ceylon, the great

2. This will be discussed in detail in Chapter Four

3. The Report of the Commission on Local Government, Chairman K.N. Choksy, 1955, S.P. No. 33 of 1955, p. 1.

chronicle, named Mahawamsa which gives all the information about ancient Ceylon and its people, and the few published works which have referred to this subject. Therefore, the analysis which is now presented is an original attempt to examine this limited information.

I. The ancient period

The Choksy Commission Report summarises the position in central-local relations during the ancient period in the following terms:

"We would say that the systems of local government in ancient Ceylon would appear to have been of a patriarchal type, in which the affairs of every village were directed and controlled by its natural leaders whose decisions were accepted and obeyed by the community in general. The village elders met from time to time at a convenient spot, where surrounded by those who cared to hear and see and criticize their proceedings, they deliberated on affairs of common interest, adjusted civil disputes, and awarded punishments to ordinary offenders against person and property. Cases of serious crime were reserved for the consideration of the King himself. These Village Councils of ancient Ceylon, which were known as "Gamsabhawas" were not controlled or directed by the King or any central authority. We are not certain whether there were formal rules of procedure laid down, but matters of common interest were fully discussed by the Village Councils, and the decisions of the majority were accepted upon by the community without dissent. There were too, in time larger councils known as "Rata Sabhawas", which dealt with matters affecting a whole district or province. The fundamental ideas of democracy seem to have been in active operation in these institutions."⁴

However, an analytical evaluation of the relationship between the ancient Central Government and the local authorities of the country emphasises the fact

4. ibid., p. 5.

that, although the local authorities were independent of the Central Government in certain aspects, there were instances where the local authorities were under the guidance and supervision of the Central Government. Hence, it could be argued in this respect that, although the ancient local authorities of the island enjoyed very great independence, yet, they were under the control of the Central Government. Hence, an analytical evaluation of the structure and functions of central and local government of ancient Ceylon is essential to demonstrate the relationship which prevailed between the Central Government and the local authorities of the country.

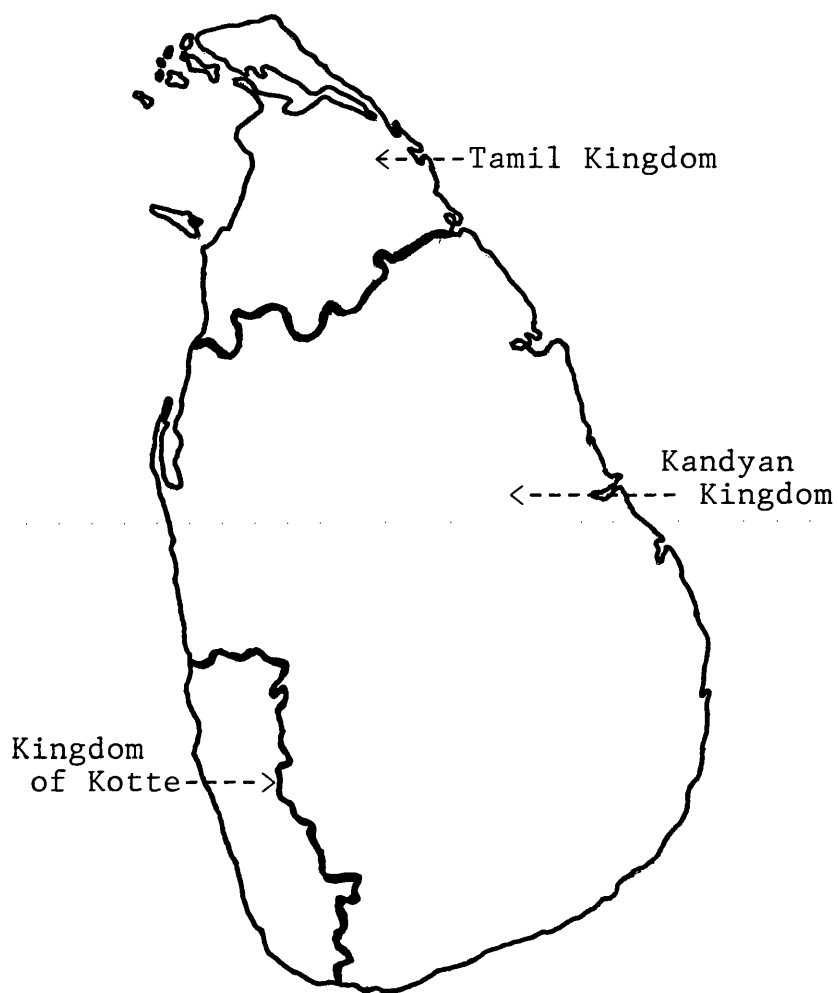
1. The Central Government

At the time of the arrival of the Portuguese, three kingdoms existed in Ceylon; the Tamil Kingdom of the north, the Kandyan Kingdom at the centre of the country with eastern and south coastal areas and the Kingdom of Kotte.⁵ These three kingdoms were independent of each other and, as will be discussed in detail in the following paragraphs, were governed separately by three monarchs.

Out of these three kingdoms, the latter was undoubtedly the most important and the King of Kandy was usually a relation of and tributary to the King of Kotte.⁶ However, in relation to the administrative matters there seems to have been no inter-relationship between these kingdoms. On the other hand, the structural divisions for administration

5. Sir Charles Collins, Public Administration in Ceylon, Royal Institute of International Affairs, 1951, pp. 2-5

6. ibid., p. 3.



Map II - Kingdoms of Ancient Ceylon

Source: National Archives, Sri Lanka

of the kingdoms were basically similar in all the three kingdoms. Constitutionally, these kingdoms, especially the Kandyan Kingdom from its inception to its demise, were absolute monarchies. The administration of the kingdom was carried out by the King through the provincial rulers, and the power flowed from the monarch through the bureaucracy at the different levels in the administrative hierarchy.⁷

Consequently, as will be demonstrated in the forthcoming paragraphs, this expansion of royal activity resulted in the growth of a highly bureaucratic administrative organization in which the activity of the King was enforced throughout the kingdom by a hierarchically arranged provincial structure, with officials, who were appointed by the King, functioning at each level. Thus, for administrative arrangements as shown in diagram I, a kingdom was divided into disavas, the disavas were sub-divided into korales, the korales into pattus and the pattus into villages.⁸

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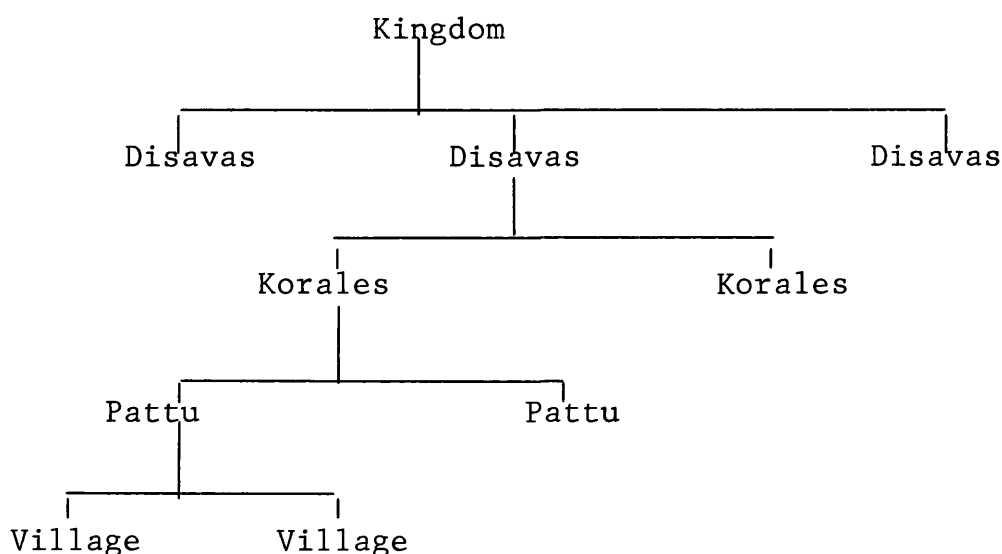


Diagram I -The administrative divisions of a kingdom

Source: Sir John D'Oyly, A Sketch of the Constitution of the Kandyan Kingdom

7. Sir John D'Oyly, A Sketch of the Constitution of the Kandyan Kingdom, Tisara Prakashakayo, Colombo, 1975, pp. v-vii

8. T. Abeyasinghe, Portuguese Rule in Ceylon, Lake House Investments Ltd., 1966, pp. 69-72.

Each kingdom was ruled by a King who was the head of the State with supreme and absolute powers. The King was the focus of the entire administrative machinery. The description given by John O.D'Oyly, who was a Government Agent during the early 19th century, with regard to the powers of the King, emphasises the fact that the head of the State had supreme authority over his kingdom. According to D'Oyly:

"The power of the King is supreme and absolute. The Ministers advise, but cannot control his will. The King makes peace and war, enacts Ordinances and has the sole power of life and death. He sometimes exercises judicial authority in civil and criminal cases, either in original jurisdiction or in appeal. . . . The authority of the King is exercised through many officers of State."⁹

The King was assisted by a council of other officers. The exact number of officers who served under the King, and their varying titles and duties, are difficult to trace accurately. However, according to D'Oyly, there were many officers of State who exercised the authority of the King.¹⁰

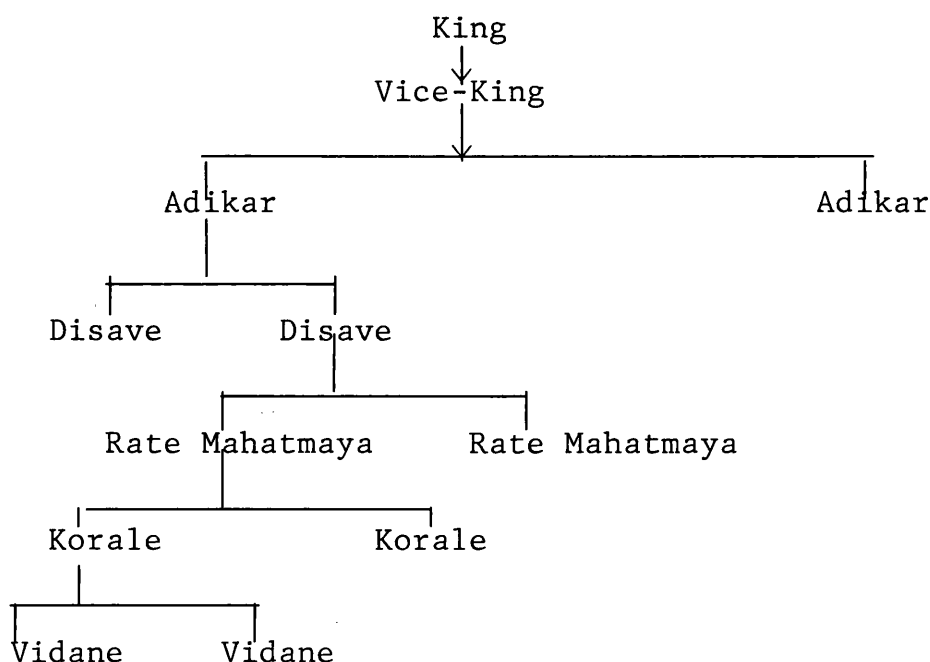


Diagram II -The administrative hierarchy of a kingdom

Source: Sir John O.D'Oyly, op.cit.

9. Sir John O.D'Oyly, op.cit. p.1

10. ibid.

As illustrated in diagram two, the administration of the kingdom was highly centralised and the functions were carried out by different officers, all of whom were appointed by the King. According to D'Oyly, there were two Adikarams, commonly known as Adikars, who were involved with the administration of public affairs.¹¹ The next in rank were the Disaves, who were the governors of the provinces, which were called disavanies. The Disaves had the power to collect revenue, to superintend every other part of the Government, and to administer justice within their jurisdiction.¹² Other than these two officers who were involved with administration, there was another officer who was the sub-chief in a disavany. He was known as the Rate Mahatmaya. This officer was appointed by the Disave and he exercised all the authority of a Disava, when the Disava was absent from his office. Rate Mahatmaya was the chief of the rates (literally districts). In addition to these officers Korales too were appointed to a disavany and these officers performed their duties under the Rate Mahatmaya. Lower down in the rank there were village headmen at times known as Vidanes, who were in charge of villagers.

An analytical examination of the functions of the Central Government reveals that, during the ancient period, the relationship between the Central Government and the local authorities of the country was more or less a partnership. An analysis of the structure, powers and

11. ibid.

12. R.W. Ivers, Manual of the North Central Province, Ceylon, George J.A. Skeen, Government Printer, Ceylon, 1899, p. 59.

functions of the local government of the island during the period under review will most certainly emphasise this fact; nevertheless, it is necessary to examine the role of the Central Government in this respect, as this will illuminate important aspects of central-local relations.

As will be apparent later, the ancient local authorities were primarily involved with judicial matters, as was the case in Anglo-Saxon England.¹³ Simultaneously, the Central Government took a keen interest in the administration of justice. The reference in ancient literature to the office of Adhikarana-nayake (literally the Chief Justice) signifies that the administration of justice by the Central Government was well organised. It is apparent that this was inevitable in a country which comprised an agricultural community, just as the case was in Anglo-Saxon England. During this period agriculture was in a very flourishing state throughout the island. The needs of the community were very limited and their concerns were mostly centred on their lands and irrigation; hence, it is not a surprise to note that there were many disputes which arose either regarding the ownership of lands or for the share of water for their land. As in Anglo-Saxon England, in ancient Ceylon the main objects of the Government had to be the "preservation of the peace and regulation of the agriculture of the village, the management of cultivated fields, the regulation of the land where animals were pastured, the cutting of wood, the digging of turf and so on".¹⁴ Consequently, while the supreme power was

13. Epigraphia Zeylanica, Volume Three, 1928-1933, Published for the Government of Ceylon by Humphrey Milford, Oxford University Press, 1933, p. 70

14. Sir Ivor Jennings, Principles of Local Government Law, University of London Press, Second Edition, 1939, p. 19.

vested in the King, all other officials exercised judicial power in settling criminal and civil disputes within their jurisdictions. In addition to these, there was the Great Court named Maha Naduwa , which consisted of the Adhikarana-nayake, Adikars, Disaves, Lekams and Muhandirams, all of whom were royal officers.¹⁵ The court was held at different periods as occasion suited. The chiefs were to take their seats according to their rank from right to left,¹⁶ and the Adhikarana-nayake, principally conducted the inquiry. Describing the procedure of the Maha Naduwa or the Great Court, D'Oyly points out:

"The proceedings take place in the natural and most obvious course of [procedure], first hearing the statement of the plaintiff or prosecutor, next the answer of the defendant or prisoner. All the witnesses on both sides as far as practicable are collected and examined on the same day. If a witness be disabled by sickness, without a prospect of early attendance, messengers are sent and bring his evidence in writing, confirmed if possible, by oath at a neighbouring Dewale.¹⁷ The witnesses are never sworn in court and on clear or trifling cases no oath is administered. In others they are sent to the neighbouring Dewale and sworn to the Truth of their deposition in presence of two or three headman[sic] as Commissioners, who return and report it to the court."¹⁸

The cases which came under the cognizance of the Great Court were either civil or criminal and were of two kinds:

1. The cases which were referred for hearing by the King and were invariably reported and decided by his authority in the above mentioned manner;

15. Sir John D'Oyly, op.cit., p.32

16. ibid.

17. A temple where there are statues of the Gods

18. Sir John D'Oyly, op.cit., p.33

2.Those which were originally instituted before the Great Court or as usual introduced by the chief of the complaining party.¹⁹

Differences of opinion amongst the chiefs were seldom persisted in after full discussion. However, if either party was obstinate against the determination of the court the case was sometimes submitted to the King, especially if it concerned property of value or persons of consequence.

Thus, it is significant to note that, during the period under review, the Kings had taken a keen interest in the administration of justice. On the other hand, as pointed out earlier, the local authorities of the country were mainly involved in administering justice within their localities. Hence, it is important to analyse the structure and functions of local government in ancient Ceylon in this respect.

II. The local government

The beginning of the ancient form of local government has its roots running back to at least 425 B.C. According to the Mahawamsa, the great chronicle,²⁰ during the fourth century B.C. King Pandukabhaya established the village boundaries over the whole island.²¹ According to the historians and the information gathered from the ancient inscriptions, these boundaries demarcated the jurisdictions of early local authorities.²² Moreover, according to the inscriptional evidence it is evident that the local councils were

19. ibid.

20. op.cit. p.2

21. Wilhelm Geiger, The Mahawamsa, Ceylon Government Information Department, Colombo, Chapter 10, p.75

22. University of Ceylon Review, volume VIII, No.2, p.116.

functioning throughout the kingdoms. Five examples of inscriptions in the third, second and first centuries B.C., given below, demonstrates not only the existence of the local councils in various parts of the kingdom, but also that they were highly involved with the day-to-day activities of the area. For instance, in all the five examples described below, it is said that the village corporations have donated caves to the priesthood in the said areas. During the period under review, one of the most important duties of the citizens was to see to the well-being of the priesthood. During this period, the priests were living in cleared and decorated caves and the donation of such a cave was to be regarded as a highly important social service in the area. The inscriptional evidence in this respect reads out as follows:

1. "Pugiyana lene sagasa dine"- The cave donated to the priesthood by the village corporation.
2. "Madukasaliya pugiyana lene sagasa"- The cave donated to the priesthood by the village corporation of Madukasali.
3. "Sidaviya pukana lene Catudisika sagasa Caratisa jete Kaburanake anujete"- The cave (donated) to the priesthood of the four quarters by the village corporation of Sidaviya, the Chairman (being) Caratisa (and) the Vice-Chairman Kaburanake.
4. "Dipikulikaye pukisaya lene sagasa"- The cave (donated) to the priesthood by the village corporation of Dipukulikaye.
5. "Tubadavasaka pugiyana lene"- The cave (donated) by the village corporation of Tubadavasaka.²³

23. Choksy Commission Report, S.P.No.33 of 1955, pp.1-2.

The system of local government of ancient Ceylon comprised Gamsabhawas at the village level and the Rata Sabhawas at the district level. In addition to these two types of councils there is evidence to say that there were three types of committees which were mainly involved with the administration of the village.²⁴ Apparently, it could be argued that these committees were functioning at the "grass roots" level, especially in assisting the Gamsabhawas to carry out the day-to-day affairs in the villages.

Thus, it is concluded to say that the Gamsabhawas had to look into the needs of the farmers of the village, especially to see that all the farmers were getting their due share of water. The ancient Sinhalese had their general customs as rules for irrigation and it was the duty of the members of the Gamsabhawas to see that the farmers were abiding by their rules. According to these rules, all the proprietors of any tract or paddy land using the water of a common canal had to keep that canal in proper condition. The dam was put up and repaired by the joint labour of all who were bound to assemble at the proper season for the purpose. Each proprietor was responsible for the proper repair of a certain portion of the canal. If any damage occurred to the canal, or the dam as a result of an act of God, all the proprietors had to assemble to repair the canal. If someone failed to take part in repairing the dam or the canal, he was not allowed the use of the water. No new land could be cultivated to the detriment of existing fields.

24.E.Z. Volume Three, op.cit., p.71.

If someone was interested in cultivating new land, firstly, he had to consult the authorities of the Gamsabhawas prior to the cultivation. The Chairman of the Gamsabhawa had a duty to inspect the canal daily, to remove obstructions, provide for the prompt repair of any sudden accident and to detect the flow of water or injury to the banks.²⁵ The committees were especially involved with the Gamsabhawas in carrying out these essential duties within their localities. Consequently, the structural basis of the ancient system of local government could be laid down as in diagram three.

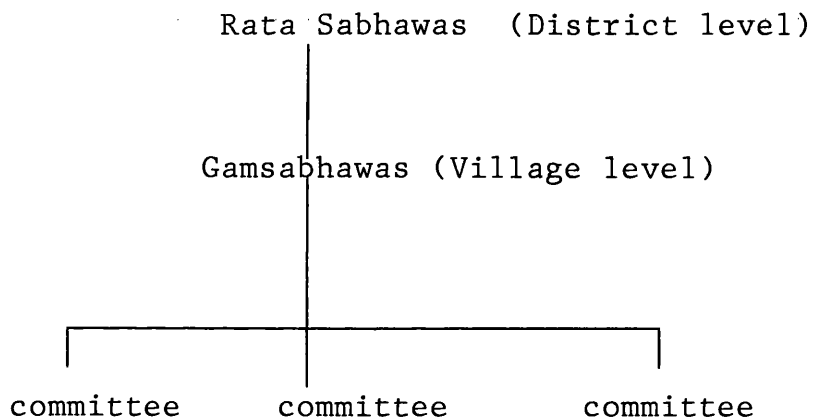


Diagram III - The structure of local government in ancient Ceylon

Source: Epigraphia Zeylanica Volume I and III

In addition to the above mentioned duties, the three types of committees were also involved with the administration of villages, e.g. with public utility and community services. Thus, the Committee of Eight was entrusted

²⁵ C.O. 54/323, Report of the Government Agent, Badulla District, 19th December 1855.

with the general administration of the village, while the other two committees dealt with the forests or waste lands and fines due to the King from the village.²⁶

The Gamsabhawas were self-contained political units established in villages. Describing the ancient Gamsabhawas, Major Thomas Skinner states:

"In the native government, existed a primitive and very simple institution, termed Gangsaib [sic] or Gamsaib [sic]. Whether of Indian or Ceylon origin I am uncertain; the first syllable for "village"; the second, the Hindoostanee for "land master". The institution appear to have long existed in the north of India as we hear of its having formed a highly prized portion of the system of the ancient Government of Punjaib."²⁷

However, the meaning of the term Gamsabhawas in Sinhalese is "the meeting or the assembly of the village".

On the other hand, the Rata Sabhawas were limited to districts in Nuwaragam Palata, Vanniya division and the Hurulu Pattuwa. These were institutions well adapted to the social state of the Kandyan Sinhalese people, who were addicted very much to caste prejudices. As has been pointed out already, the functions of these local authorities were analogous to those of local authorities in Anglo-Saxon England. According to Sir Ivor Jennings, local government in England during the ancient period was primarily concerned with the preservation of peace.²⁸ He further states:

"Until comparatively recently nearly all the functions of local government were exercised in England by justices of the peace. For some or all of these reasons some writers such as Professor Edward Jenks included what are commonly called local "judicial" authorities

26. Epigraphia Zeylanica, Volume Three, op.cit., p.71

27. Major Thomas Skinner, Fifty Years in Ceylon, Ceylon Historical Journal, Volume 21, Tisara Prakashakayo, Colombo, 1974, p.148

28. Sir Ivor Jennings, op.cit., p.8.

within their description of the system of local government."²⁹

Ostensibly, it could be argued that the "local judicial authority" is the precise word which could be used in describing the ancient local government in Ceylon, as both the Gamsabhawas and Rata Sabhawas were mainly involved in settling disputes among their constituents. Thus, referring to Rata Sabhawas and the Gamsabhawas, Sir Charles Collins noted:

"There were also local councils, called Rata Sabhawas in the districts and Gamsabhawas in the villages, which performed a number of useful functions, including the voluntary settlement of disputes, (where there was an appeal to the Rata Sabhawas from the Gamsabhawas).³⁰

Accordingly, it is apparent that during ancient times the Central Government, as well as the local government, were thoroughly involved in administering justice within the kingdoms. This emphasises the fact that, in relation to the primary duties carried out by the central and local government, a relationship of partnership existed between Central Government and local authorities of the country. However, it is significant to note that, while the functions of these local authorities emphasise that the relationship between central and local government was a partnership, detailed analysis of these two entities demonstrate on the one hand the independent nature of local authorities and on the other hand the supervisory powers of the Central Government extended to these local councils.

29. ibid., p.3

30. Sir Charles Collins, op.cit., p.4.

Firstly, it could be argued on the basis of the composition and the method of appointment of the members of the local authorities that the Gamsabhawas, Rata Sabhawas and the three committees were bodies independent of the Central Government. The Gamsabhawas consisted of the elders and the principal people of the village or, as Codrington has pointed out, the heads of families of the village.³¹ Pridham's version regarding the members of the Gamsabhawas was that they consisted of the head of every family resident within the village limits and, for appointment as a member, the rank of the family or the share of property belonging to them was not taken into consideration.³² This signifies that the only qualification for the post of a member of the council was that the particular person should be a head of a family. In Skinner's description of these councils it is said that:

" . . . Gangsaibs [sic] were composed of three or five elders of one large or of a convenient number of contiguous small villages; they were elected by the people and held their meetings transacting their business."³³

In King v Pahala Gamue³⁴, the Judicial Commissioner had expressed the view that the ancient Gamsabhawas consisted of elders and principal people of the villages. According to Dr. P.E. Pieris, the Gamsabhawas

31. H.W. Codrington, Ancient land tenure and revenue in Ceylon, Ceylon Government Press, Colombo, 1938, p.3

32. Charles Pridham, An historical, political and statistical account of Ceylon and its dependencies, Volume One, 1849, T and W. Boone, pp.219-220

33. Major Thomas Skinner, op.cit., p.148

34. Unreported Case, Board of Commissioners' minutes, 3rd December 1819.

were presided over by the Vidane (the Village Headman), who was supported by the Kanakapulle (the Village Accountant), Liyanna (the Village Clerk) and Undiya (the Corn Measurer).³⁵ If the council included these officers it seems to have been a board similar to Indian village Panchayats. However, in Kiria v Poola³⁶ minute information is given by a priest who was a witness in this case regarding the composition of Gamsabhawas. According to this evidence, during the ancient period the priest of the particular village was the President of the Gamsabhawa and in addition to the President there were ten to fifteen members. The Vidane (the Village Headman) convened the Gamsabhawa. If this can be taken as an accurate description of the composition of ancient Gamsabhawas, when we take into consideration the members of the council it is quite clear that these ancient Village Councils were independent authorities which consisted of members who were nominees of the inhabitants.

On the other hand, the Rata Sabhawas, consisted of the Mohottala, Lekama and the Vidane Pediya (literally the Washerman). The Mohottala was the chief officer with a similar rank to that of a Korale. The Korale was an officer of the rank similar to a Disava, but who could exercise his power only when the Disava was out of the region. Badderalala was the officer next to the Korale and was of the same rank. The Lekama was next in rank to Badderalala and was of a similar status to an Aratchchie or

35. P.E. Pieris, Ceylon, the Portuguese era, The Colombo

Appothecaries Co. Ltd., Volume two, 1914, p. 86

36. 1859 3 Lorenz reports, p. 143.

a headman of a village. The other officer was a dhoby (the Washerman) who was an essential man in the Kandyan society, especially for weddings and funeral ceremonies. This position was the lowest of the ranks in the Rata Sabhawa as well as of the society but he was an essential officer in a Rata Sabhawa for the procedure to be carried on.

The appointment of these officers was not based on a principle of elections either by the constituents or by the heads of the Central Government. The Rate Mahatmaya in office of the particular district, who was the officer appointed by the Central Government, could not appoint the officers of a Rata Sabhawa though he had the powers to involve himself in matters within his jurisdiction. According to the rules of the Rata Sabhawa if the officers were appointed by the Rate Mahatmaya the people did not recognise the council as duly convened. The appointments of the members of the Rata Sabhawa were solely decided at the discretion of the families of each division. Each division had one family as their chieftains and the officers of the Rata Sabhawa appointed by them had jurisdiction in the respective division of their chiefs. There were no specified rules of qualifications but it is understood that to become one of the officers of a Rata Sabhawa, other than a dhoby (the Washerman), a person should be experienced, able and elderly. However, if a person had an intention to obtain any of the posts in a Rata Sabhawa he had to meet the chief of the village with a gift which contained a rupee (about four pence

at present) and forty betel leaves and afterwards make his application. If he was selected to the post then he had to give/ ^{another} present to the chief. This signifies that these posts were decided at the discretion of the district chieftain without any influence from the Central Government, but corruption also would have been inevitable in these situations as the elective principle was not recognised.

There is only one inscription which has a reference to the existence of the three committees of the villages.³⁷ Hence we have no idea as to how these committees were elected. However, according to Dr. Paranavitana, "an analogous case may be cited from South India with which Ceylon is closely connected as regards its social and political institutions".³⁸ According to two South Indian inscriptions there have been similar committees in South India namely, the "Gold Committee", the "Annual Committee", the "Garden Committee", the "Tank Committee" and the Pāncāvara Committee. The names indicate the functions of their sphere of work, but, the exact significance in the name of the last committee is not known precisely. However, it indicates that it supervised all the other five committees.³⁹ The Annual Committee and the Garden Committee had twelve members each and the rest of the committees consisted of six members. The committee members were selected by casting lots, which is an important feature to note. The method of election is minutely described in two South Indian inscriptions. According to these records, there were thirty wards in the kingdom and the residents

37. E.Z. Volume Three, op.cit., p. 71

38. C.L.R. Third Series, Volume One, February 1931, No. 2, Published by the Ceylon Observer, Colombo, Ceylon, p. 52

39. Archaeological Survey of India, Annual Report 1904-1905, Calcutta, Government of India, Central Publication Branch, p. 136

of these thirty wards had to assemble to one point and write down a name for pot-ticket election, from among the residents who were not on any of the committees for the last three years and who were not close relations of the officers who had just retired from the committees. The qualifications for the nominees were that a person should have assessed tax lands, should live in a house built on his own site, should be below the age of sixty and above thirty, with knowledge of the Vedas and Sastras and be conversant with business, possess honest earnings and have a pure mind. The tickets bearing the names of the nominees were collected in each street. One pot-ticket was drawn by a young boy who could not distinguish any forms and thus one name was obtained for each of the twelve streets. These twelve persons constituted the Annual Committee. Subsequently, pot-tickets were drawn for the Garden Committee, Gold Committee, Tank Committee and the Pāncavāra Committee.⁴⁰

Consequently, if the same method was adopted for electing members for three Committees in ancient Ceylon, it could be argued that the members of these committees were elected independently, without any interference from the Central Government. However, it appears that in terms of the method of appointment of the members of the Gamsabhawas, Rata Sabhawas and the committees, the local authorities of the country were independent of the Central Government.

On the other hand, there is evidence that local authorities in ancient Ceylon were under the control of the Central Government. This argument is based mostly on 40. *ibid.* pp.138-139.

evidence which elaborates the fact that the Central Government supervised the local authorities through the royal officers, who visited the local councils annually. For instance, discussing the ancient local government, Codrington states:

"Royal control was exercised by officers who went on circuit annually somewhat in the manner of the English assizes."⁴¹

Consequently, it appears that these annual visits were made especially to "administer justice and to collect / ^{the} King's dues",⁴² as in medieval England. During the middle ages, the central control over local authorities was exercised through the "justices in eyre". According to Hart and Garner:

"A rigorous system of administrative inspection served to acquaint the Central Government with the activities of local bodies and officers and to correct or punish their misdoings. This central control was exercised by the justices in eyre. From as early as Henry I's time commissions were issued to itinerant justices and in Henry II's reign these became distinguished into various classes, the most important being the commission ad omnia placita, or general eyre."⁴³

As has been discussed already, the administration of justice was one of the main functions of ancient Gamsabhawas. The King's officers did not interfere with the decisions of the Gamsabhawas in civil disputes but, if the parties concerned were not satisfied with the decisions of the Gamsabhawas, they had the discretion to appeal to the Rata Sabhawa or to the chief of their district. On the other hand the criminal matters were not solely vested in the hands of the authorities of the Gamsabhawas. The local councils

41. Codrington, op.cit., p.43

42. ibid.

43. Hart and Garner, op.cit., p.12.

were given the power by the King to deal with cases of murder, violence, theft, robbery and other offences against the inhabitants, during the period of King Mahinda iv (circa A.D. 953-969).⁴⁴ However, the royal officers who went on circuit annually were to inquire into the decisions on criminal cases handled by these local bodies. It is, thus, significant to note that the Gamsabhawas were under the supervisory powers of Central Government, especially when the Gamsabhawas were dealing with the cases of murder, violence and theft. The extent of supervision carried out by the Central Government is significant by the following rule which was laid down by the Central Government. According to this rule, when there was a crime within the limits of the Gamsabhawas the detention of the suspect was to be done within forty-five days and if this was not carried out, the particular village had to pay a fine of one hundred and twenty five Kalandas of gold (about 1½ lb. troy)⁴⁵, which was a large sum for those days.

Moreover, a duty was entrusted to the Chairmen of Gamsabhawas to collect and hand over the taxes to the Central Government. The revenue thus collected was three fold, for it included land tax, which was collected from the produce of the land, water rates, which were collected from the property of private individuals' irrigated fields and the fish tax, levied from the share of the fish caught in the tanks.⁴⁶ The evidence which we gather from early inscriptions to the effect that the Chairman had employed a subordinate officer named Badagarike (literally the treasurer) to

44. Epigraphia Zeylanica, Volume I, Edited and translated by D.M. de Zilva Wickramasinghe, Oxford University Press, 1912, p. 249, C.L.R. op. cit., p. 51

45. Codrington, op. cit., p. 44

46. History of Ceylon, Volume I, Part I, University of Ceylon, Ceylon University Press, Colombo, 1959, p. 239.

assist the Chairman with regard to tax matters signifies that the collection of taxes on behalf of the Central Government was one of the primary duties of the Gamsabhawas.

The collective responsibility which lay upon the members of the Gamsabhawas for producing offenders within a limited period, the fines imposed upon the whole community in case of failure and the taxes collected by the Chairman on behalf of the Central Government, recall certain administrative features of the Saxon and Norman periods of English history. Another point of resemblance to English administrative methods was that the royal officials, like the itinerant justices or members of the curia regis of the Norman Kings, went on yearly circuits in the country not only to settle disputes but also to see that the Government dues were properly collected.⁴⁷ Thus, Hart and Garner point out:

"The justices were armed with a long list of questions, known as the articles of the eyre, and by examination of the rolls and records and by presentment of the juries, delinquencies and misdoings of officers and communities were brought to light and followed by amercements imposed upon the wrongdoers. The eyre, thus, formed a most efficient engine for inspection and control over the whole field of local government."⁴⁸

In concluding the analysis it is important to mention certain general features that have emerged through the relations between the Central Government and the local authorities during the pre-colonial period. It is thus, clear that during the ancient period under the indigenous form of Government the local councils were participants in solving

47. E. Z. Volume I, op.cit., p. 244

48. Hart and Garner, op.cit., p. 13.

irrigation disputes, petty thefts and land disputes among the villagers. Moreover, the local councils collected the taxes, on behalf of the Central Government. These features were re-introduced in 1871, by the British administrators, under the Village Councils Ordinance, No. 26 of 1871, which will be discussed in detail in Chapter Three. In considering the controls of the Central Government during the pre-colonial period it is apparent that the local government institutions were independent bodies in terms of selection of their members. However, although the local government organs not only experienced the interference of the Central Government with their affairs but also had to fulfil duties on behalf of the Central Government. Nevertheless, it should be mentioned that the aspirations of these controlling powers were thwarted by physical factors such as the islands peculiar physical features, and inadequacies in the means of communication at the disposal of the King at the centre of the country to impose his control effectively on a day-to-day basis at the village level.

II. The Portuguese, Dutch and the early British periods

Since the year 1505 the island has experienced three different systems of administration. To begin with, in 1505 the country fell an easy prey to the Portuguese and, in 1656 and 1796, to the Dutch and British respectively. Although during the Portuguese and the Dutch periods, the Central Government had not given much thought

to develop the system of local government within their territories, it is apparent that there have been certain instances, especially under the Portuguese regime, which display some characteristic features in central-local relations. Hence, it is important to discuss the central and local government institutions with special reference to central-local relations during each of these three regimes. However, it should be mentioned at this juncture that very little evidence has survived of the systems of local government of the Portuguese and Dutch regimes. Therefore, it is impossible to present a detailed analysis in this context.

1. The Portuguese period

The Portuguese administration was limited to Kotte and the South-West coastal strip of the island. In 1597, the Captain-General, Don Jeronimo de Azevedo, summoned a conference of local chiefs at Malwana to decide whether to govern the country according to the local customs or according to the Portuguese rules. At this Malwana convention it was decided that the country should be governed according to local customs. As illustrated in diagram four, the Portuguese territory was divided into four provinces which were named as disavanies. Over each disavany was placed a great noble with the title of Disava. The Disava was responsible for the revenue of his province as well as for the judicial and military administration. The disavanies were divided into

korales each under a Korale-Vidane,with revenue and judicial powers. The korales were divided into villages and each village or a group of villages was under a village headman named Vidane or Mayorals as the Portuguese called them. All these officials were under the control of the Disava. Although these arrangements sound well in theory,there was much abuse and corruption in practice,both by the Portuguese as well as by the Sinhalese officials.⁴⁹

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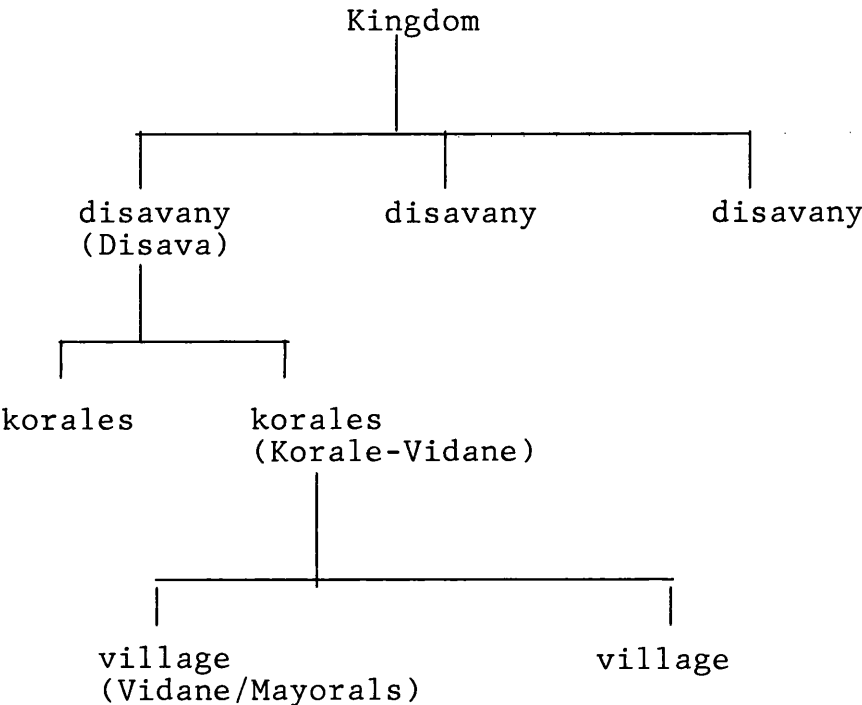


Diagram IV -The administrative structure in Portuguese Ceylon

Source: T.Abeyasinghe,op.cit.,pp.69-72

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49.T.Abeyasinghe,op.cit., pp.69-73.

It is important to analyse the Portuguese colonial official life style during this period, as this reveals the trends of local government which were spreading towards the colonies and the attitude of the Central Government towards these local authorities. Describing the Portuguese colonial life style, Professor C.R.Boxer indicates that the most important feature in local government was the Senado da Camara (literally the Municipal Council), which was the equivalent of Spanish Cabildo and the Anglo-American Town Council.⁵⁰ He further explains:

"like these[other] institutions it attained greater importance when transplanted overseas to the colonies, than when it remained directly exposed to the centralising tendencies of the home government. The composition of the Senado da Camara varied slightly in accordance with the place and time, but it usually comprised two justices of the peace (juizws ordinarios), three councillors or aldermen (vereadores) and a procurator or attorney (procurador). The method of election to these (and sometimes to other) municipal posts was not exactly the same in every community, but it did not differ widely."⁵¹

There is reference to the work of a Municipal Council in Colombo during the Portuguese period. The first information regarding this organisation runs back to the year 1585 and takes the form of a royal letter, received by the Viceroy, implying that the inhabitants of Colombo had complained to the Viceroy that the Captains of that fortress were interfering with the affairs of the Municipal Council and its money.⁵² This is the only mention by Coutto about the Municipal Chamber of Colombo and he indicated that

50. C.R.Boxer, Salvador de Sa and the struggle for Brazil and Angola, 1602-1686, University of London Press, 1952, p.30

51. ibid.

52. J.R.A.S.C.B., Volume XX, Colombo, H.M.Richards, Acting Government Printer, Ceylon, 1908, p.268.

the council consisted of aldermen elected annually and other officials.⁵³ It is also said that the council had aldermen and other leading citizens.⁵⁴ Direct evidence of the composition of the council is very scarce. However, it appears, through the signatures of a petition forwarded by the council, that there were six regular members in the council. These six officials were the three aldermen or vereadores, two magistrates or the juizes ordinarios and the procurator or the procurador.⁵⁵ The officials, especially the aldermen, were elected by the citizens and these elections were held annually. It is difficult to specify whether the Ceylonese who were residing in that locality were eligible for voting. Under Portuguese colonial rule generally the citizens who were not mixed with Jewish, Moorish or Negro blood or who were not engaged in industry, trade or commerce were entitled to vote, but it is difficult to say whether this rule applied to Ceylon. Portuguese territories in Ceylon were small in scope and the majority of the voters would have been the Portuguese citizens residing in the island.

The most significant feature of the Camara of Colombo was that it was under the strong influence of the Central Government. Though the Council had elected members, it functioned under the Captain-General, who was the governing authority of Portuguese Ceylon. The relations between the Central Government and the Municipal Council of Colombo during the Portuguese period reveal some interesting points to note. The most fascinating feature of this relationship

53. ibid., p.404

54. ibid., Volume XI, p.532

55. C.R.de Silva, The Portuguese in Ceylon, 1617-1638, H.W.Cave and Co.Ltd., 1972, p.180.

was the number of attempts made by the Municipal Council to function independently. Hence, disputes between the Camara and the chief administrative officers of the Central Government were frequent. According to Dr. C.R.de Silva:

"They were usually the result of the attempt of a vedor to impose some dues on the casados of Colombo, or the attempt of the Camara itself to spearhead opposition to an unpopular General."⁵⁶

On one occasion when the officials of the Camara protested against an unpopular General, the officials were arrested and they were sent to Goa for trial.⁵⁷ There were even clashes between the Captain-General and the Municipal Council, due to the interference of the Captain-General with the administration of the council. Thus, in 1618 the Municipal Council obtained an order from the King of Portugal specifically forbidding the Captain-General to interfere with the administration of the city.⁵⁸

The dispute between the Central Government and the Municipal Council regarding the grant of Cinnamon may be mentioned to illustrate the desire of the Central Government to interfere with the affairs of the Municipal Council and the number of attempts made by the Camara to restrain their powers. The Camara had the power to levy taxes for the purpose of supplying utility services. One of the main sources of income was the taxes collected from ferries. Besides this the other incomes were by levying taxes on non-staple food, receiving rents for municipal property and imposing fines on the violators of rules.⁵⁹ However, the

56. ibid.

57. ibid.

58. ibid., p. 181

59. ibid.

major part of the income was derived from the right to export forty baharas of cinnamon, which was an allocation by the Central Government as an annual grant. Thus, in the year 1614, there were some efforts by the Central Government to suspend the grant to the Municipal Council, which was the right of sale of forty baharas of cinnamon. The Council petitioned the King against this effort and, despite the restrictions from the Central Government, the Municipal Council continued to take this grant for municipal purposes.⁶⁰ The struggle to restore the right of the grant continued until 1623 and finally in 1624 the King of Portugal not only agreed to continue the grant but also, in view of the Dutch threat, increased the grant to one hundred baharas of cinnamon a year.⁶¹

On many occasions requests were made to the King by the city officials for exemption of the Council from the jurisdiction of the Captain-General. For instance, on one occasion he replied to the Council stating:

"in a place like Colombo, with such a small number of persons capable of governing to choose from it would be inconvenient to exempt the Chamber from the jurisdiction of the Captain."⁶²

One last point may be made before we proceed to discuss the Dutch regime, to demonstrate the determination of the Camara to function as a parallel authority to the Central Government. On several instances the Camara, even without any statutory duty, advised the Captain-General on matters of policy and, especially during the times of crisis,

60. ibid., p. 182

61. ibid.

62. J.R.A.S.C.B., Volume XX, op.cit., p. 60, T. Abeyasinghe, op.cit., p. 98.

the Captain-General consulted the Camara to obtain advice.⁶³

However, it is also relevant to note that as the Portuguese administrators were keenly involved in the trade of cinnamon they paid very little attention to the development of local government.

2. The Dutch period

The Dutch ruled the maritime provinces from 1656-1796 and the country was administered by the Dutch East India Company. The central authority consisted of the Governor-General and the Political Council of Ceylon. The Council consisted of the senior officials of the area.⁶⁴ These officers were the Hoofd Adminstrateur or the chief administrator, the Disave, the Principal Military Officer, the First Ware House Keeper, the Pay Officer, the Trade Supervisor, the Fiscal and the Political Secretary. The Commanders of Galle and Jaffna were also ex-officio members and when they were present in Colombo they had precedence over all the resident members. The Dutch too, like the Portuguese, were mainly engrossed with their business of trade and as a result of this they paid very little attention to the administration of the island. They also like the Portuguese, had the same system of administration with Disaves and disavanies. As shown in diagram v, the area of authority of their territory was divided into three main commanderies or administrative sub-divisions namely, Colombo, Galle and Jaffna. Each division had a Disava with number of deputy Disaves, the number depending on the extent of the area to

63. C.R. de Silva, op.cit., p.181.

64. The Ceylon Journal of Historical and Social Studies, Volume 8, Tisara Prakashakayo, Colombo, 1965, p.1.

be governed. A disavany was divided into korales and korales consisted of two chiefs; the Mudaliyar and the Korale. The Mudaliyars were in charge of military services and were assisted by Muhandirams and Arachchies, while the civil affairs were carried out by the Korales.

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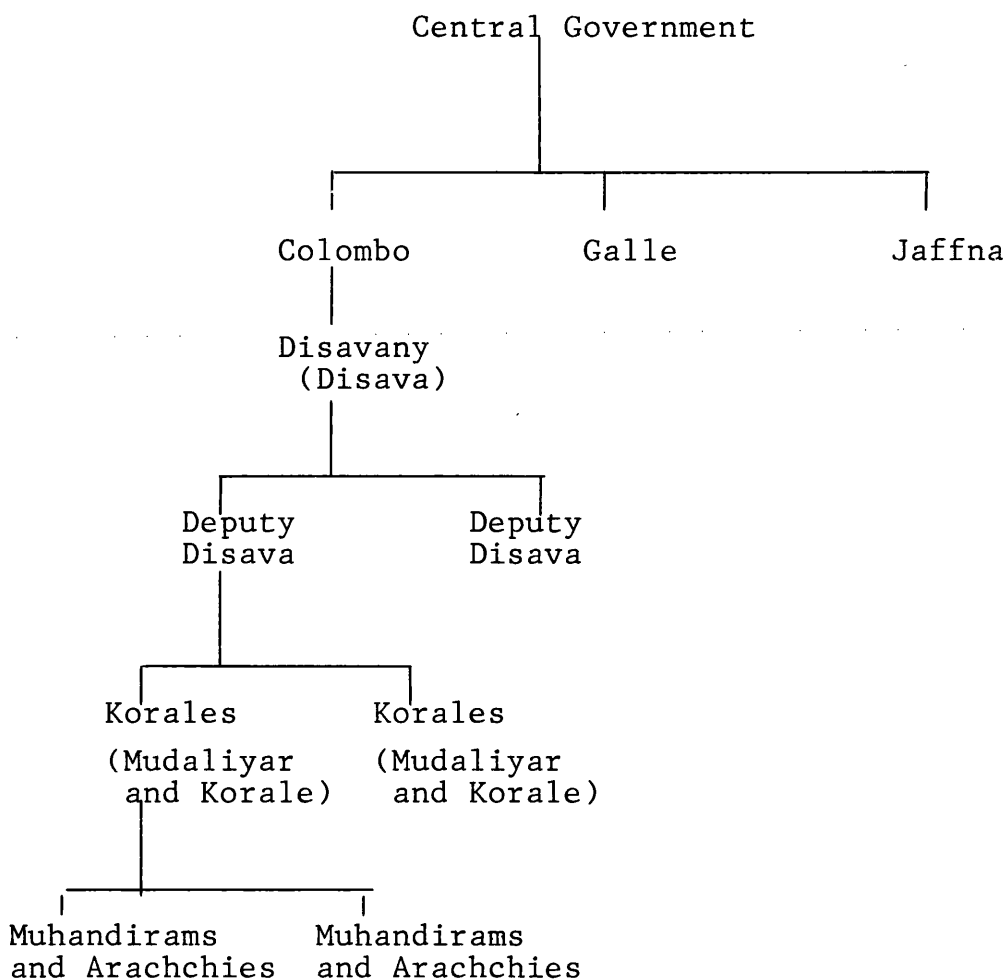


Diagram V - The administrative structure in Dutch Ceylon

Source: The Ceylon Journal of Historical and Social Studies,
op.cit., note (64)

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It is interesting to identify a highly bureaucratic system of Government during the Dutch period. The most significant feature in central-local relations during this period was that there was no Municipal Council or similar local government institution to carry out the municipal matters of the city. Instead of having a system of local government, it appears that the Dutch Government had entrusted Wardmasters with necessary powers to carry out all the local government functions. The Governor appointed Wardmasters and they were responsible for the sanitation, roads and fire control of the city.⁶⁵ The City of Colombo was divided into eight wards, each under a Wardmaster. During the period between 1666 and 1676 three Ordinances were enacted with regard to local government in Dutch Ceylon. The first Ordinance of 2nd March 1666 was enacted against cutting earth and building houses in the streets and roads. By the second Ordinance of 10th August 1673 it was ordered to keep the streets clean on pain of fine of fifty rix Dollars. The Ordinance of 17th December 1676, ordered all persons having houses in town covered with cadjan⁶⁶ to get the same covered with tiles on pain of forfeiting the whole ground and required that the streets before each house were to be kept clean and that the cattle be driven out of the Fort for pasture on pain of punishment and forfeiting the same.⁶⁷ The available data, it should be reminded, does not permit us the opportunity of examining the Dutch administration on municipal matters in detail. However, in accordance to the limited amount of

65. D.A. Kotelawala, *The Dutch in Ceylon, 1743-1766*, Unpublished Thesis of University of London, 1969, pp. 301-302

66. Coconut leaves

67. Index to the Legislative acts of the Dutch Government of the island of Ceylon, appearing in a collection of Legislative Acts of Ceylon Government, Volume I, published by William A. Skeen, Government Printer, p. 408.

evidence, in relation to the Dutch administration, it is quite apparent that all the functions within the Dutch territories were carried out by the Government officers under the supervision and control of the central authority.

3. The early British period: 1796 - 1836

This may be introduced as the period which established a modern system of local government in the island, a process which raised significant problems in the relations between the central and local government, problems many of which remain unresolved. The first half century of British administration in Ceylon demonstrates the decline of the ancient local government despite the various attempts made by the British Governors to re-establish it in the island. This will be discussed here to identify the attitude of the Central Government towards the local authorities during the period under review and chiefly as a historical background to the Third Chapter, which will discuss in depth the relations between the central and local government during the British administration.

The capture of Ceylon by British forces was undertaken mainly to protect the East India Company's territories in India and to prevent the French fleet making use of the finest bay at the South Asiatic coast at Trincomalee. By this time the French armies invaded Holland and overthrew the Stradtholder⁶⁸ and he fled to England. As

68. Viceroy or Governor of Holland.

the Stradtholder was taking refuge in England, he ordered the Dutch Governor in Ceylon to admit the British troops into the island. However, as this order was not carried out, the British forces had to conquer the Dutch forces. Trincomalee, which was not only a natural harbour but also the finest and most important place in the island at that time, was the first to fall into British hands. After the capture of Trincomalee on the 26th August 1795, the British troops arrived in Colombo and on the 15th February 1796, all the Dutch dependencies in Ceylon, including Colombo, surrendered to the British.⁶⁹ However, until the Peace of Amiens in 1802, it was not clear whether the Dutch territories would remain under British rule. For this reason from 1796 until the island became a British Crown Colony on the 1st February 1802, the administration was undertaken by the East India Company which functioned from Madras. The Madras Government created a system of dual control of civil and military affairs. The Commander-in-chief of the troops also exercised certain functions in civil matters. However, the civil matters were taken over after 1796 by the Madras Civil Service, under the resident and the Superintendent of Revenue, Robert Andrews. He had four subordinate assistants to carry out administrative, financial and judicial matters. Each assistant had a number of native officers named Aumildars who were in charge of sub-divisions of districts. Their duties were mainly based on the collection of revenue and in addition to that a small share of administrative functions ^{were} allocated to them. Prior to the appointment

69. C.A.L.R., Volume III, Part IV, 1917-1918, Edited by J.B. Lewis and J.M. Seneviratne, Published by Office of the Times of Ceylon, Colombo, pp. 239-256, L.J.B. Turner, Ceylon Under the British Rule, 1795-1932, Oxford University Press, 1933, pp. 8-14.

of the Aumildars these duties were carried out by the native Mudaliyars who knew the ancient customs of the island. The Aumildars were natives of the Madras Presidency who knew nothing about the prevailing customs in the island. They had the same powers as the Mudaliyars, but used them more oppressively. The taxes were high and the lands were held on service tenure which required work on a given number of days on the roads.⁷⁰ The ultimate result was the growing unrest among the Sinhalese which resulted in rebellions lasting for more than a year.

Certain measures were taken for the development of the administration as a result of the riots. Tree tax and Coconut tax were abolished and a commission was appointed under the Chairmanship of General de Meuron and the subsequent conciliatory measures taken by the Government were able to restore the peace of the country by March 1798. The Sinhalese officials, viz, Vidanes, Arachchies, Muhandirams and Mudaliyars were given their due designations.

A period of new developments began in 1798 with the arrival of the Hon. Frederick North as the Governor and the Commander-in-chief of the island. The Madras administration was abolished and the island was controlled by the Crown and the East India Company jointly. The Governor had instructions to correspond with,

"the Council of Directors of the Company and with the Secretary of State through the Court, and to obey such orders as he might receive from the Court, or thirteen or more of them or

70. Sir Ivor Jennings and H.W. Tambiah, The Dominion of Ceylon, the Development of its Laws and Constitution, London, Stevens and sons Ltd., 1952, p.9.

from the Secret Committee of the Court or from the Governor-General of Fort William (Calcutta) in India in Council in the same manner as the Governments of Fort St. George (Madras) and Bombay,⁷¹

thus combining the administration of Ceylon with that of India.

North was of the opinion that the officials should be employed by the Crown, but he too, complained about the Madras officials. They were from another Presidency and knew nothing of the different conditions of Ceylon. The ultimate result of these proposals was the appointment of a new Commission and Ceylon thus became a Crown Colony on the 1st February 1802.

The change in the political situation in the island affected the ancient system of local government. The period between 1796 to 1802 was filled up with uncertainty and no measures were taken for the development of local government. Meanwhile, the system of Government which was introduced in the maritime provinces in 1802 and which lasted for over thirty years was that of a typical Crown Colony. Discussing this new introduction Tressie Leitan states:

"All legislative, executive and judicial power was vested in a Governor and through him to the British Parliament. There was also a council of officials which the Governor could consult; since however, he was under no obligation to accept its advice he was able to rule more or less autocratically during the period."⁷²

The history of the modern development begins with the fall of the Kandyan Kingdom in 1815. This was the first time the country was governed under one rule after a

71. ibid.

72. Tressie Leitan, Local government and decentralised administration in Sri Lanka, Lake House Investments, 1979, p.3.

period of three long centuries. Hence, changes which took place in every field of the Government administration were inevitable.

The period between 1815 and 1856 signifies the unsuccessful attempts made by the Central Government to resuscitate the ancient local government in the island. For example, the Proclamation of 2nd March 1815, commonly known as the Kandyan Convention, validated the local institutions and their functions. Section 4 of the Proclamation provided:

"the dominion of the Kandyan provinces is vested in the Sovereign of the British Empire, and to be exercised through the Governors or Lieutenant. Governors of Ceylon for the time being and their accredited Agents, saving to the Adigars, Dessaves [sic], Mohottales, Coraals [sic], Vidanes and all other chief and subordinate native headmen lawfully appointed by authority of the British Government, the rights, privileges and powers of their respective officers and to all classes of the people, the safety of their persons and property with their civil rights and immunities according the laws, institutions and customs established and in force amongst them."

Section 8 of the Proclamation further provided:

". . . the administration of civil and criminal Justice and Police over the Kandyan inhabitants of the said provinces is to be exercised according to established forms and by the ordinary authorities."

Section 11 of the Proclamation declared that the royal dues and revenues of the Kandyan provinces were to be collected with the support of the provincial establishment and according to lawful customs. The Gamsabhawas were once again recognised as local judicial authorities, by

the Charter of Justice,1833. According to the Charter of Justice,1833,the entire administration of justice,civil as well as criminal, was vested exclusively in the courts constituted by the Charter itself.⁷³ Further,it directed that the power of the Court of Vice admiralty and the Piracy Commission Court be saved and that the Governor should not establish any other courts in the island.While granting exclusive jurisdiction to the courts constituted by the Charter,the proviso of section 4 of the Charter directed:

"nevertheless,and we do hereby declare that nothing herein contained shall extend or be construed to extend,to prevent any person from submitting their differences to the arbitration of certain of assemblies of the inhabitants of villages known in our said island by the name of Gangsabes[sic]."⁷⁴

However, in spite of all these attempts to resuscitate this dilapidating system of local government,soon after the country became a Crown Colony Gamsabhawas fell into desuetude. The Rata Sabhawas were abolished under section 4 of the Charter of Justice,1833. The decline of Gamsabhawas soon after the change of the Central Government,in spite of all the attempts made by the British Governors to revive it, demonstrates the relationship which existed between the ancient local authorities and the Central Government. While the local government institutions gradually disappeared from the administrative structure of the island,the Central Government was taking measures to develop the administrative machinery of the country. As a result of this enthusiasm of the Governors in improving the administration of the country a Commission

73.Charter of Justice,1833,section 4

74.ibid.

was appointed under the auspices of Major Colebrooke and Charles Cameron. The Colebrooke-Cameron Commission, which was heavily influenced by the Benthamite philosophy of 19th century Britain, recommended changes in the constitutional and administrative machinery of the country. Accordingly,⁷⁵ the machinery of the Central Government was reconstituted, to make provision for the appointment of an Executive Council of five official members to assist the Governor. However, under the re-organisation, the most important introduction was the establishment of a Legislative Council of nine official and six unofficial members, the latter appointed on a communal basis, which introduced the principle of including members of the general public in the operations of the Government.⁷⁶

However, the recommendations of the Colebrooke-Cameron Commission had no influence in resuscitating the dilapidating system of ancient local government. By the end of 1845 there was no such system of local government, as had existed in the pre-colonial period, left in the island. Governor Frederick North was keen in resuscitating the ancient Gamsabhawas and it was mainly due to his interests that the Paddy Lands Irrigation Ordinance, No. 9 of 1856 was passed establishing Village Councils in the island. This paved the way to the evolution of a modern system of local government which will be discussed in detail in the next Chapter.

75. This will be discussed in detail in Chapters Three and Five
76. T. Leitan, op.cit., pp. 3-4.

Chapter Three

Developments in local government with special reference to the developments in central-local relations:Part One 1856 to 1930

In relation to the developments in central-local relations in England, Dr. R. M. Jackson has pointed out:

"It is often supposed that the growth of the powers is a modern development, but, that is not so; the major forms of control derive from the formative period in the development of local government, during the last century."¹

Further, he argues in this respect:

"It is worth considering some of the points in that development because they indicate the changing circumstances in the relations between the Central Government and local authorities."²

Similar to this situation in England, the development in the relationship between the Central Government and local authorities in Ceylon could be identified through an examination of the developments in local government, which took place since from 1856 in the island. As discussed in the previous Chapter, until the year 1856, no local government institution was introduced to the country by the legislature. However, in accordance with a detailed analysis of the structural developments in local government, it is evident that since 1856, the Government took a keen interest in introducing a number of local Councils of different status and functions, the common feature in these institutions being the high level of bureaucracy on the one hand and the incapacity and reluctance

1. R. M. Jackson, The machinery of local government, Second Edition, London, McMillan, 1965, p. 264

2. ibid.

of local Councils to act as independent authorities on the other hand. Nevertheless, it is apparent that these bodies and their constitutions reveal the relationship which existed between the central and local government. Hence, it is essential to examine the developments in local government to analyse the developments in central-local relations during the past years.

The structural developments in local government since 1856 to the present day emphasise the fact that there have been two stages in its development. Whilst the Paddy Lands Irrigation Ordinance enacted in 1856 marks the inception of the modern local government in Sri Lanka, the Donoughmore recommendations, presented in 1931, emphasise the diversion of the development of local government of the country. Hence, it is important to discuss the two phases of development in central-local relations with regard to ^{the} developments in central and local government from 1856 to 1930 and 1930 to present day.

For this purpose, this Chapter will outline the introduction of the various types of local government institutions during the period between 1856 to 1930 and will discuss in detail the extent of interference by the Central Government with the functions of the local authorities and the salient features in the development of central-local relations. The developments in English local government will also be examined to evaluate the developments in relations between the Central Government and local authorities in England as well as in Ceylon. The developments in central and

local government during 1930 to 1984 will be discussed in Chapter Four.

I. Developments in local government: 1856-1930

As has been discussed in Chapter Two, at the beginning of the 19th century there was no system of local government in the country, and until the appointment of the Colebrooke-Cameron Commission nothing occurred with regard to the re-establishment of local government. Hence, it is important to discuss firstly the proposals of the Colebrooke-Cameron Commission in this respect.

1. The recommendations by the Colebrooke-Cameron Commission

It should be noted at this point that the primary purpose of the appointment of the Colebrooke-Cameron Commission was in no sense to develop the local government in the country,³ its main purpose being to recommend the changes that should take place in the judiciary.⁴ However, Colebrooke was impressed by the ancient local government institution of Gamsabawas⁵, and his opinion was that petty thefts and irrigation disputes among cultivators of villages should be submitted to the arbitration of this local government institution.⁶ Colebrooke in this respect repeatedly requested the successive Governors to revive the ancient system of Gamsabawas. In his recommendations, Colebrooke emphasised:

"from the peculiar Constitution of the Village Communities composed as they often are of people belonging to particular castes, their

3. G. C. Mendis, Colebrooke-Cameron Papers, Volume I, Geoffrey Cumberlege, Oxford University Press, 1956, pp. 69-70

4. ibid.

5. Supra, Chapter Two

6. ibid.

ancient usage may be preserved, and it would be satisfactory to them if the appointment of the headmen of each Village Community or Parish should be made on the "nomination of the inhabitants " who are proprietors of land or houses."

Again Colebrooke referred to these recommendations in September 1832, in a communication to Goderich:

"In a paper which I have since drawn up I have stated the desire of the native inhabitants that means might be afforded to them of summary decisions of the numerous petty cases which arise and which in the remoter parts of the country it is extremely inconvenient to them to be obliged to refer to the regular courts. I consider that the ancient mode of referring such cases to a Gansabe or Village Council would be advantageously preserved where it is established and restored where it has been superseded and I refer to the several petitions of the inhabitants in support of my opinion that it would be acceptable to them. The person composing the village courts (Gansabe) should be duly registered and the headman of the village or another qualified person should preside in it, to promote regularly in its proceedings."

However, these recommendations were not implemented and the Village Councils were not established in the island until 1856. In the meantime a report was submitted by Bailey - the Assistant Government Agent of Badulla at that time and who was interested in irrigation work - regarding the dilapidating state of ancient irrigation work in the island and the major role which could be attributed to the Gamsabhawas in resuscitating these works.⁹ He proposed the grant of powers to the Gamsabhawas, presided over by the Government Agent or his assistant, to deal

7.G.C.Mendis, op.cit., pp.69-70

8.C.O.54/122, Colebrooke to Goderich, September 1832

9.G.C.Mendis, Ceylon under the British rule, The Apothecaries Co. Ltd., Colombo, 1952, p.96.

summarily with breaches of irrigation rules and inflict fines upto £2.¹⁰ Although, the recommendations of the Colebrooke-Cameron Commission had no effect in resuscitating the Gamsabhawas, the Village Councils introduced in 1856 had some resemblances to this ancient local government institution. However, the most interesting point in this episode was that although the Village Councils were introduced to the island, this was not in accordance with Colebrooke's recommendations, but with the suggestions made by Bailey. However, the establishment of Village Councils, under the Paddy Lands Irrigation Ordinance, No. 9 of 1856, could be regarded as the beginning of modern local government in the island.

2. The Paddy Lands Irrigation Ordinance, No. 9 of 1856

It could be argued that the interest taken in irrigation works was the determining factor for the introduction of modern local government. Though the Gamsabhawas lost their effectiveness due to the Proclamation of 1818, the Village Council system of paddy cultivation continued without a break and the British Government recognized that the restoration of irrigation rules and works would be of immense value to the native cultivators. It was Sir Henry Ward, the then Governor, who took the initiative in introducing the long awaited Village Councils to the island. Soon after his arrival he realised that one of the most important needs was to repair the irrigation works and that for this reason the revival of Village Councils was

10.C.O.54/323, Report by the Assistant Government Agent, Badulla, 19th December 1855.

essential. Although, by this time Colebrooke had pointed out the need to establish Village Councils, the Governor was more interested in the report submitted by Bailey, who had stated:

"Irrigation in the flat parts of this district was carried on chiefly by means of tanks . . . canals and water courses. The large canals have for centuries been out of use and are only traceable by the remnants of their vast embankments, but some six or seven tolerably large ones yet, irrigate a considerable extent of land, but they are in a most dilapidated condition; and hastily and imperfectly patched up; seldom or never cleaned; they are rendered sufficiently water proof for each year, cultivated only with great and constant toil. I know of but one stone dam in the whole district, and that is in . . . bad order A masonry sluice is a thing unknown and each cultivator cuts a hole in the bank where ever it suits him, when he wants water for his field We find the whole of the low-country dotted with tanks from vast sheets of water to little ponds We find every village with its one or more tanks almost all now ruined and useless, owing to the frequent and long protracted droughts. . . . the destruction of the tanks therefore had almost depopulated the country and the raiyats have become sickly . . . apathetic and poor farmers too listless, even to repair their own village reservoirs."¹¹

As discussed earlier,¹² during ancient times the members of the Gamsabhawas were able to punish dishonest or lazy cultivators for taking more than their share of water from irrigation canals or for neglecting their part in keeping the works under proper maintenance.¹³

This was the obvious reason for the Governor to enact the Paddy Lands Irrigation ordinance, which he introduced as an Ordinance which:

grants power to derive their water from a common source, to revive their ancient customs and

11. ibid.

12. Supra, Chapter Two

13. Sir J.E. Tenant, Ceylon, an account of the island, physical, historical and geographical, Volume II, London, Longmans, 1859, p.461.

constitutes a local tribunal for the settlement of all disputes connected with irrigation."¹⁴

The Paddy Lands Irrigation Ordinance, which was introduced to facilitate the revival and enforcement of the ancient customs regarding the irrigation and cultivation of paddy lands¹⁵, provided in its preamble:

"Where as the non-observance of many ancient and highly beneficial customs connected with the irrigation and cultivation of paddy lands as well as the difficulties, delays and expense in attending the settlements [o]f differences and disputes among the cultivators relating to water rights and in obtaining redress for the violation of such rights, in the ordinary course of law, are found to be productive of great injury to the general body of proprietors of such lands, and it is expedient to provide a remedy for these evils"¹⁶

Under this Ordinance, Village Councils were constituted consisting of not less than three nor more than thirteen members.¹⁷ The Government Agent of the district was the appointed President and¹⁸ the selection of members was decided not by popular vote but solely at the discretion of the President of the Council.¹⁹ The Village Councils were convened exclusively to inquire into the breaches of irrigation rules and to punish the offenders.²⁰ However, it should be noted that under the Irrigation Ordinance, no Village Council was convened without a requisition by the villagers of the respective area. Nevertheless, the Government Agent had the power to convene a Village Council for a particular district at his discretion.²¹ Therefore, it is important to discuss the method of convening a Village Council

14.C.O.57/23, Address of his Excellency Sir Henry George Ward, in opening the session of the Legislative Council, 30th July 1856

15.C.O.56/7, Paddy Lands Irrigation Ordinance, No.9 of 1856

16. ibid.

17. ibid., section 11

18. ibid.

19. ibid.

20. ibid., section 10

21. ibid., section 3.

and the powers and functions of it.

Constitutionally, the most significant feature in Village Councils with regard to central-local relations was the authority which was attributed to the Government Agent. The Government Agent, it should be noted, was the chief administrative officer of a province appointed by the Central Government.²² The procedure of convening Village Councils demonstrates the dominant role of the Government Agent in this respect.

A Government Agent of a province had the right to call a public meeting of proprietors of paddy lands situated in any district either when it appeared to him advisable or upon a requisition signed by not less than ten proprietors of paddy lands in any village.²³ The purpose of this meeting was to determine by majority vote, whether the ancient customs of the said district with regard to the irrigation and cultivation of paddy lands and the maintenance of the water rights of such proprietors could be observed and enforced.²⁴ If at this meeting it was determined that it would be expedient to revive and enforce the ancient customs in that district then the proprietors of the lands in the same area had to appoint a committee, consisting of not more than five nor less than three proprietors to be associated with the Government Agent for the purpose of drawing a collection of such customs.²⁵ When the customs were drawn, the Government Agent submitted them to the Governor for the approval, amendment or disallowance of

22. *Infra*, Chapter Five

23. Paddy Lands Irrigation Ordinance, *op.cit.*, section 3

24. *ibid.*

25. *ibid.*, section 5.

the Governor, with the advice of the Executive Council, and if the rules were approved notice of such approval was given by Proclamation and published in the Government Gazette, and these rules became binding upon all proprietors of paddy lands in the said district.²⁶ If a complaint was made to the Government Agent that a person residing within the province had committed a breach of any of the rules, then the Government Agent had to give notice to the village where the party complained against was residing or where the act was alleged to have been committed. The inquiry was held by the Village Council at a place and time appointed by the Government Agent and, at the close of the inquiry, if the Village Council was of the opinion that the party complained against had committed a breach of rules and if this opinion was concurred in by the Government Agent the Village Council awarded damages not exceeding the sum of forty shillings.²⁷ Whenever a person was adjudged by a Village Council to pay a sum of money, the President of the council could transmit to the Police Magistrate of the district in which such person resided an order "directing payment thereof to be made into Police Court of such district", and if payment was not made the Police Court was to "proceed to enforce the same and the charges relating to the recovery thereof" and to deal with the person liable to make the same in such manner as if a penalty for a like amount had been imposed on him by the said Police Court.²⁸

26. ibid., section 8

27. ibid., section 10

28. ibid., section 14.

The proceeding before a Village Council was summary and free from formalities of judicial proceedings and no advocate,proctor²⁹ or agent was permitted to appear on behalf of any complaint or defendant or other person before a Village Council.³⁰ No appeal to the Supreme or any other Court against the decision or award of any Village Council was allowed, and no injunction was issued by any such court for the purpose of preventing the execution of any order, decision or award made by, any Village Council.³¹

The Paddy Lands Irrigation Ordinance was considered as experimental, as the knowledge about the ancient institution of Gamsabhawas was limited.³² Hence, it was limited for five years. However, the Paddy Lands Irrigation Ordinance was re-introduced in 1861 and since then there were various amendments to the Ordinance from time to time. As the introduction of the Village Councils under the Paddy Lands Irrigation Ordinance was experimental ^{as} and/they were the first of such local government institutions introduced during the modern period, it is evident that it was essential to have some authority over these local councils. It is apparent that although the Village Councils seemed well established in theory, in practice there were numerous problems with regard to the functions. For instance, as has been pointed out by Roberts, the greatest problem in relation to Village Councils was

"the inability of so many villagers to sustain their corporate activities without the compulsive

29. A similar position to an English Solicitor

30. Paddy Lands Irrigation Ordinance, op.cit., section 12

31. ibid., section 13

32. Michael Roberts, The Paddy Lands Irrigation Ordinance and the revival of traditional irrigation customs, 1856-1871, Ceylon Journal of Historical and Social Studies, Volume 10, 1964, Edited by Ralph Pieris, The Colombo Apothecaries Co. Ltd., p. 118.

fiat of Government. However much local influence the headmen were supposed to have they were not altogether successful in enforcing obedience to irrigation rules and in supervising irrigation works."³³

On the other hand, it is apparent that the Government Agent too had to face difficulties in administering the Village Councils. The report of the Government Agent, Matara, for the year 1871 demonstrates the tediousness of the administration of the Village Councils.

"Each year shows that incessant personal attention on the part of the Assistant Agent is necessary to carry out irrigation works by villagers. To simply order the Mudaliyar or Headmen to carry out any work may sound very fine but practically the results are small unless the Headmen be encouraged and supported by the Assistant Agent taking an active interest in their efforts; if the villagers see this and know that once they agree to any undertaking every one must contribute and that no shirking, is allowed, all will combine cheerfully to carry out the work. But endless watching and numerous inspections are necessary and many difficulties arise to contend with of [sic] while the natural procrastination and dilatoriness of the people are by no means least."³⁴

According to these reasons, it could be argued that it was inevitable that the Central Government had to have the authoritative power over the functions of Village Councils created under the Paddy Lands Irrigation Ordinance. Thus, it appears to be a reasonable inclination of the Central Government to empower the Government Agent to have authority over the Village Councils. However, it is important to analyse the extent of this supervisory power of the Government Agent over the Village Councils and the attitude of the Central Government in this respect.

33. *ibid.*, p.128

34. Administration Report of the Assistant Government Agent, Matara, for the year 1871, E. Elliott, 12th June 1872, p.161.

In accordance with a study of the Paddy Lands Irrigation Ordinance, it is clear that the Village Councils were established and functioned according to the discretion and the authority of the Government Agent of the particular province.³⁵ Governor Ward was of the idea that the usefulness of the Village Council hinged on its proper implementation and on the active co-operation and drive of individual Government Agents and Assistant Government Agents.³⁶ The Executive Council minutes during the period 1857 to 1859, for instance, point out some important features in this respect.

"The working of the Ordinance was carefully watched. The Executive Council scrutinised each and every rule agreed to at the proprietors assemblies and refused assent to a few. Their supervision was directed towards freeing the proceedings from any "semblance of official minuteness" and presenting rules which gave headmen room to exercise arbitrary or illegal powers. In this period there was a distinct unwillingness to clothe the headmen with more authority and to depute them any of the powers which the revived Gamsabawas possessed."³⁷

The most noteworthy feature in this respect was that the Central Government did not trust the working of Village Councils without the wholesome control of the Agent's presence.³⁸ However, on the other hand it could be argued that the Central Government was influenced by the experience in central-local relations in England during the period under review. For this reason it is relevant to examine the developments in central-local relations in England during this period.

35. Paddy Lands Irrigation Ordinance, *op.cit.*

36. M. Roberts, *op.cit.*, p.118, Government Agent's Circular, 7th November 1856, p.117

37. *ibid.*, pp.118-119, C.O.57/24, Executive Council minutes, 15th July and 17th October 1857, C.O.57/25, Executive Council minutes

38. C.O.57/29, Executive Council minutes, 18th February 1861.

3.The developments of local government in England

be

It has to/ remembered at this point that this was the period of local government reform in England. The Poor Law Amendment Act,1834 could be introduced as the starting point of this period as it was followed by the Municipal Corporation Act of 1835³⁹ and the Public Health Act of 1848,which established Local Boards of Health.The Whig Government was compelled to take action due to the growing burden of the poor rates of the country.⁴⁰ As a result, in 1831 a Royal Commission on the poor laws was appointed and it reported in 1834.⁴¹ The Poor Law Amendment Act of 1834 was not only a great land mark in the development of modern local government in England,but also could be regarded as an Act which influenced the developments in local government in British Ceylon. Under the Poor Law Amendment Act,there was provision for the election of local boards of guardians⁴² which had been introduced as a "local ad hoc authority",⁴³ with a central body of Poor Law Commissioners.⁴⁴ The justices of the peace were appointed as guardians of the poor. Though this Act established the principle of election, the franchise was not democratic.⁴⁵ Thus,Hart and Garner describe the first reform of local government in the 19th century,that of the Poor Law Amendment Act in 1834,as an Act which initiated a growing system of central control.⁴⁶ According to Jackson:

"the new system depended upon an extremely tight central control.Regulations were laid

39.Halsbury's Statutes of England,Volume 28,p.427,para.1003

40.Sir Ivor Jennings,op.cit., p.43

41.ibid.

42.Poor Law Amendment Act,1834,sections 37 and 38

43.Jackson,op.cit., p. 265

44.ibid.

45.Poor Law Amendment Act of 1834

46.Sir W.O.Hart and Professor J.F.Garner,Hart's introduction to local government and administration,9th edition, London,Butterworths,1973,p.25.

down from the centre. Circulars and directions were continually being sent out, and the element of discretion in the amount of poor relief was reduced practically to vanishing point."⁴⁷

He has further pointed out:

the local officials who carried out this work were so much under the direct control of the central body that they would hardly be regarded as officers of the local guardians, but rather as holding a public appointment."⁴⁸

The Poor Law Amendment Act 1834 had set up a central almost autocratic, authority in the Poor Law Commissioners with the widest powers of controlling local Poor Law authorities in the minutest details of their work.⁴⁹ This emphasises the fact that during the period under review in England, local authorities were under the supervision of the Central Government. Hence, it could be argued that the Central Government of British Ceylon, was influenced by this growing tendency of central control in England. Consequently, it is important to analyse the developments of local government in British Ceylon, with special reference to the relations between the Central Government and local authorities, to identify the developments in central-local relations as well as the extent of British influence in this respect.

II. Some salient features in the development of local government during 1861-1930

The most significant feature in local

⁴⁷. Jackson, op.cit., p.265

⁴⁸. ibid.

⁴⁹. Hart and Garner, op.cit., p.27.

government during the period under review was the introduction of a number of local government institutions to the island. Thus, Road Committees were constituted under the Ordinance, No.10 of 1861, the Municipal Councils Ordinance was passed in 1865, the Village Communities Ordinance was enacted in 1871, the Local Boards of Health and Improvement Ordinance was introduced in 1876, the Small Towns Sanitary Ordinance became law in 1892, a Board of Improvement was established for the town of Nuwara Eliya in 1896 and Urban District Councils, General District Councils and Rural District Councils were constituted under the Ordinance No.11 of 1920. These local Councils, which were heavily depending on the Central Government, especially financially, had very little or no power to establish themselves as independent local government institutions. As has been already discussed, this was the era of modern local government in British Ceylon, hence, the supervisory powers of Central Government over the local authorities were inevitable under the circumstances. Nevertheless, a detailed discussion regarding the constitutional aspects of these modern Councils is essential to analyse the extent of these supervisory powers over local Councils.

1. Public Thoroughfares Ordinance, No.10 of 1861

This Ordinance was enacted "to consolidate and amend " the laws relating to public roads in the country. According to Earl Grey:

"The construction and maintenance of roads was one of the heaviest charges upon the Colonial Treasury; yet, so far from its being advisable to curtail [this] work . . . it was of the highest importance to the progress and prosperity of Ceylon that the roads should be improved and many new ones made. The imperfection of the existing means of transit and the consequently heavy expense of bringing down their produce and of sending supplies to the higher country which is the best adapted for the growth of Coffee was one of the greatest difficulties with which the planters had to content."⁵⁰

The Roads Ordinance in its original form was designed to be the beginning of a system of municipal organisation.⁵¹ However, under this Ordinance only the District and Provincial Local Committees were introduced, which were highly bureaucratic institutions.

A Provincial Road Committee consisted of a Chairman, a Secretary and three to five members.⁵² The Government Agent of the province was the Chairman of the Committee⁵³, and the assistant to the Government Agent at the principal station in the province or the person who was acting in that capacity was the Secretary to the Committee.⁵⁴ The Government Agent of the province and the Commissioner of Roads were the official members.⁵⁵ In addition to these members, there were three to five members of the committee of whom at least three were persons not holding office under the Government but who were appointed by the Governor. They held office only for one year.⁵⁶

The District Committee consisted of the Government Agent or the Assistant Government Agent of the

50. K.M. de Silva, *Letters on Ceylon, the administration of Viscount Torrington*, K.V.G. de Silva and Sons, 1965, p.8

51. C.O. 54/248, Grey's minutes on Torrington's despatch 91 of 6th May 1858

52. Roads Ordinance, No. 10 of 1861, section 13

53. *ibid.*

54. *ibid.*

55. *ibid.*

56. *ibid.*

district as the Chairman⁵⁷, the Assistant Government Agent or in his absence any member nominated by the Chairman as the Secretary,⁵⁸ an officer of the Public Works Department and three other elected members representing the communities in the island.⁵⁹ The District Committees were empowered to appoint from time to time as many divisional officers for each district for the purpose of carrying out the essential functions.⁶⁰

An attempt was made by the Government to introduce the elective principle to local government under the Roads Ordinance of 1861.⁶¹ Although the Government Agent of the province was appointed as the Chairman and the Governor reserved the right to appoint the members of the Provincial Council, the members of the District Councils were to be elected by the inhabitants of each province.⁶² However, the franchise was strictly limited to males between the ages of 18 to 55 years,⁶³ residing within the district and who were liable to perform under the Ordinance.⁶⁴ Moreover, as the Provincial Committees had the power to control the affairs of the District Committees under the Road Ordinance⁶⁵, the introduction of the elective principle to the latter could not prevent the Central Government interfering with their affairs.

It was the duty of the Provincial Committee to provide the necessary labour voted by the Legislative Council from time to time.⁶⁶ On the other hand, the District Committee, subjected to the approval of the Provincial

57. ibid.

58. ibid.

59. ibid.

60. ibid., section 38

61. ibid., section 27

62. ibid.

63. ibid.

64. ibid.

65. ibid., sections 27, 28 and 37

66. ibid., section 66.

Committee, had the application, direction and control, as well as the superintendence, of the amount of labour not appropriated for works undertaken upon principal thoroughfares.⁶⁷ The establishment of the Provincial and District Committees under the Roads Ordinance had the object of introducing the municipal organisation to the country. However, it is apparent that the Central Government had no desire to allocate all the powers to these councils, as the Provincial and District Committees had to function according to the direction and control of the Central Government. For instance, any work upon any principal thoroughfare was directed by the Governor and Legislative Council and execution of such work was left to the Director of Public Works⁶⁸, who was a Government Officer appointed by the Central Government.

By this time the need for a local council to undertake municipal functions was being felt by the Central Government. During the early period of British administration the Colonial Government, following the practice of its mother country, was of the opinion that the expenditure for purely local purposes like the lighting of streets of a town should be met from funds assessed upon the house-holders of the particular town and not from the general funds of the Colony.⁶⁹ Hence, the Central Government had to collect the taxes and manage the local expenditure owing to the total absence of Municipal Councils in the island.⁷⁰ This need was emphasised in the despatch by Sir Hercules Robinson to the Rt. Hon. Edward Cardwell. He pointed out:

67. ibid., section 68

68. ibid., section 66

69. G.C. Mendis, op.cit., pp. 104-105

70. ibid.

"Owing to the absence of municipal institutions in this Colony, a great many duties devolved on the Central Government which were entirely beyond their province and the necessity of some local agency for undertaking these duties, especially during the prevalence of epidemic diseases has been felt long."⁷¹

The outcome of this enthusiasm was the introduction of the Municipal Councils Ordinance, No. 17 of 1865.

2. The Municipal Councils Ordinance

The object of the Central Government in introducing the Municipal Councils to the island was to "facilitate the immediate introduction of many most desirable local improvements which were altogether beyond the province of the general Government and which it could never efficiently supervise".⁷² The Governor and the Executive Council were under the impression that a semi-autonomous body with popular representation would be able to provide the necessary efficiency in managing the affairs of a city like Colombo.⁷³

The first Municipal Councils were established in Colombo and Kandy in 1865 and shortly afterwards in Galle under the Municipal Councils Ordinance. The Governor was lawfully authorised to create Municipal Councils with the advice and consent of the Executive Council on the application of a reasonable number of inhabitants of any town. However, the Governor had the sole authority to establish a Municipal Council even without an application from the inhabitants of a town. For instance, if the inhabitants of any town did not

⁷¹ C.O. 57/37, Legislative Council, Address of His Excellency Sir Hercules Robinson on opening session of the Legislative Council, 27th September 1865

⁷² ibid.

⁷³ ibid.

make an application for the creation of a Municipal Council and at the same time if it appears to the Governor and the Council for the said town, the Governor had the power to create Executive Council that it is necessary to have a Municipal/ a Municipal /Council in that particular town.

A Municipal Council consisted of elected and nominated members of whom one half at least had to be elected members. The inhabitants of the areas were given the power to elect councillors. For this purpose, by this Ordinance franchise was conceded to male voters over 21 years of age who owned property, the value of which was not less than Rs.100/=, and at the same time a person who owned landed property over Rs.5,000/= could stand for election as a councillor. In the event of inhabitants declining to elect or if those elected decline to serve, the Governor was authorised to appoint councillors. However, in practice the Governor appointed the Chairman and the majority of members of the Municipal Council. For example, in 1866, the Colombo municipality was divided into nine wards. There were nine elected and five nominated members in the municipality during that year. Nevertheless, it can be seen from the statistical data tabulated below, that gradually the number of nominated members was increased so that a Municipal Council had a similar number of elected and nominated members. All the nominated members of the Council were officers who were holding Government posts such as the Government Agent, the Principal Assistant of the Public Works Department, the

Principal Assistant of the Surveyor General's Department, the Deputy Queen's Advocate and the Assistant to the Colonial Surgeon.

Year	Council	Elected Members	Nominated Members
1923	Colombo	10	10 (including the Chairman)
1923	Galle	5	5
1923	Kandy	5	4 (including the Chairman)
1926	Kandy	5	4 (including the Chairman)
1927	Colombo	10	12 (including the Chairman)

Table II- The number of elected and nominated members in Municipal Councils (Colombo Kandy and Galle) during 1923-1927

Source: Administrative Reports of the Chairmen of Municipal Councils, Colonial office Records

Hence, it is obvious that, even after the introduction of the Municipal Councils Ordinance, the Central Government was reluctant to hand over the authority of municipal functions to a local government institution which consisted of fully elected members.

However, from the point of view of the development of local government, this was the Ordinance

which introduced municipal forms to the country. Previously, there was no proper authority empowered to carry out the duties of general conservancy of the towns, public markets, recovery of rates and taxes and the regulations of offensive and dangerous trades. In introducing the Municipal Councils Bill, His Excellency Sir Hercules Robinson stated:

"the establishment of municipal institutions will, I trust, facilitate the immediate introduction of many most desirable local improvements which are altogether beyond the province of the general Government, and which it could never efficiently supervise. With this view, powers and funds are given by the Bill to the councils which will enable them to supply their respective towns with water, light, proper markets and above all to undertake those measures of sanitary reform in respect of which the chief towns in the island appear to me at present to be deplorably deficient."⁷⁴

The introduction of Municipal Councils to the island, from the point of view of the development of local government, seemed to have been a success. In a speech, delivered in December 1871, Sir Hercules Robinson stated:

"As regards [the Municipal Councils Ordinance], I will only observe that it has fully answered my expectations. The towns of Colombo, Kandy and Galle are in a condition as regards sanitary and other municipal arrangements far superior to that in which they were under the management of the general Government."⁷⁵

On the other hand, in relation to the developments in central-local relations, no such improvement was seen. Although, the elective principle was recognised by the Municipal Councils Ordinance, still the official element in these local government bodies was clearly visible as the Chairmen of the Municipal Councils were Government Agents of

74.C.O.57/37, Address of His Excellency Sir Hercules Robinson on opening the session of the Legislative Council, 27th September 1865

75.C.O.57/55, Address of His Excellency Sir Hercules Robinson on closing the session of the Legislative Council, 29th December 1871.

the provinces. There were disputes between the Government and the Municipal Councils from time to time, regarding the policy matters⁷⁶, and this led to the amendments to the Constitution of the Municipal Councils in 1935, to provide for an elected Chairman as Mayor,⁷⁷ and for an elected Deputy Chairman.⁷⁸ As stated above,⁷⁹ all the nominated members of the Council were officers who were holding Government posts. Hence, it is not a surprise that the general public at the time considered the Chairman and the nominated members of the Council were instruments of the Government. There were instances where the Government clearly interfered with the municipal functions. For example, in 1885, a dispute between the Government and the Colombo Municipal Council arose, over the policies of taxation of the Municipal Council with regard to the waterworks.⁸⁰ According to the Municipal Councils Ordinance:

"Whenever, any Municipal Council shall be ready to . . . supply water for the cleansing and watering of the streets, sewers and drains thereof, . . . it shall be lawful for the said council and it is hereby authorized and empowered with the sanction of the Governor and the Executive Council, to levy annual watering rates upon the occupiers of all houses, buildings and lands in such town or portion of the town; and such rate shall be payable by such instalments and at such times as the Council shall direct and shall be assessed and levied in the manner hereinafter⁸¹ mentioned or as by any by-law provided."

In this instance, irrespective of the normal procedure of sanctioning the decided rates of the Municipal Council, the Government instructed the Colombo

76. H.A.J. Hulugalle, Centenary Volume of the Colombo Municipal Council, Ceylon Government Press, 1965, p. 83

77. Colombo Municipal Council (Constitution) Ordinance, NO. 60 of 1935, section 60(2)

78. ibid.

79. Supra, p. 20

80. Hulugalle, op.cit., p. 83

81. Municipal Councils Ordinance, section 54.

Municipal Council to raise its rates by 1½ percent.⁸²

Nonetheless, the introduction of the Paddy Lands Irrigation Ordinance, the Roads Ordinance and the Municipal Councils Ordinance within the course of ten years was not able to handle the masses of needs of the entire population. After the introduction of the Municipal Councils Ordinance, the biggest problem the Government had to face was the extra-ordinary large number of cases instituted on the criminal side of the minor courts of the island.⁸³ A very large proportion of these cases were dismissed without trial.⁸⁴ According to the Report of the Inspector General of Police, in 1869, there were 168,426 persons or about 1/13 of the entire population charged before magistrates and justices of peace.⁸⁵ In 1870, the number was 170,218. Out of these 112,301 persons were discharged without trial in 1869 and 112,063 in 1870.⁸⁶ In a letter to the Earl of Kimberley, with regard to this matter, the Colonial Secretary stated:

"By some of this large number of criminal charges has been attributed to the want of adequate means for the repression and punishment of crime and the remedies suggested by them have been an extended Police and a more effective system of Prison discipline. But from the large number of dismissals without trial, it is evident that the figures cannot be taken as a measure of the prevalence of real crime in the country. The more generally accepted explanation of the wholesale resort of the population to the Police Courts has been the love of litigation prevalent amongst the people which it is alleged

82. Hulugalle, *op.cit.*, p.83

83. C.O.54/474, Despatch No.38 to the Rt.Hon.The Earl of Kimberley from the Colonial Secretary

84. *ibid.*

85. *ibid.*

86. *ibid.*

is so strong as to lead them to bring each other into court on the most slender pretexts to gratify spite or merely to enjoy the excitement of having a case in court."⁸⁷

In reference to a remedy for this prevailing question there was a suggestion to the effect that a tax on criminal procedure should be imposed so as to check the propensity of the people, by rendering it expensive for them to indulge in it.⁸⁸ However, the Government decided that "this theory of the naturally litigious disposition of the people though no doubt true to a certain extent obviously did not go to the root of the matter" and instead the Government decided to enact the Village Communities Ordinance, No. 26 of 1871.

3. Village Communities Ordinance

Compared with the introductions of Village Councils, Provincial and District Road Committees and the Municipal Councils, it could be said that the enactment of the Village Communities Ordinance was a successful attempt in promoting local self-government in the island. Moreover, the establishment of Village Communities under the Village Communities Ordinance could be introduced as an attempt of the Central Government in developing the central-local relations of the country, especially in accordance with the ancient system of local government. This is reflected through an analysis of the powers and functions attributed to the

87. *ibid.*

88. *ibid.*

Village Communities under the Village Communities Ordinance. This emphasises the fact that the prime object of the Government was to empower the Village Communities to carry out judicial matters which were otherwise within the exclusive authority of the Central Government, as the introduction of the Village Communities Ordinance was to facilitate the administration of Village Communities and to provide for the establishment of Village Tribunals, with a view to diminish the expense of litigation in petty cases and to promote the speedy adjustment of such cases.⁸⁹ The Ordinance was framed essentially for judicial purposes and it was mostly based on the ancient Gamsabhawas.⁹⁰ Consequently, the then Governor in transmitting the Ordinance to the Rt.Hon.Earl of Kimberley stated:

"In former time the Sinhalese Village Communities managed altogether themselves the affairs of their social and communal life. The cultivation of the fields, the common pasturing of cattle, the conduct of fisheries, the use of village paths and other like matters of common concern were regulated by ancient customs and all breaches of these customs and disputes between the villagers were settled by a Tribunal consisting of an Assembly of Elders in every village. . . . Although the conditions of this village life have been to a considerable extent broken in open by the opening of the country, yet, there has been little direct interference with it on the part of the Government, and the people still retain to a great extent their primitive habits and adhere to their ancient usage."⁹¹

In the Conclusion of the despatch he has

89.Village Communities Ordinance, No.26 of 1871

90.Supra, Chapter Two.

91.S.P.No.33 of 1955, op.cit., pp.8-9.

further stated:

"One thing is certain, that if the measure itself succeeds, it will prove of uncommon benefit to the country. It will furnish the Government with an administrative machinery which is greatly needed and without which it is hardly possible to effect any improvement in social and moral conditions of the people."⁹²

According to the Village Communities Ordinance, if the Governor, with the advice of the Executive Council, was satisfied that a certain Chief Headman's division or part thereof should be brought under this Ordinance, then the said division or part thereof became liable to the provision of the Ordinance.⁹³ Every Chief Headman's division or part thereof which had come within the provisions of the Village Communities Ordinance was sub-divided into villages or convenient groups according to the discretion of the Governor who acted with the advice of the Executive Council.⁹⁴ The Village Community was a body of six or more persons elected by the inhabitants of the area.⁹⁵

The Village Tribunals were established in villages or groups of villages in any Chief Headman's

92. ibid.

93. Village Communities Ordinance, section 4

94. ibid., section 5

95. ibid., section 13.

division or part thereof according to the discretion of the Governor and the Executive Council.⁹⁶ The Village Tribunals were presided over by Government officials appointed by the Governor.⁹⁷ The President was assisted by five councillors elected by the villagers.⁹⁸

As stated above, the object of establishing Village Committees and especially the Village Tribunals was to provide an inexpensive, prompt and popular scheme of settling village disputes on the spot and also to encourage the people to take part in the management of their own village affairs. One of the important features in the Village Communities Ordinance was the keen interest shown by the Central Government in the re-establishment of the ancient system of local government in the island. The Colonial Secretary, stated in a despatch to the Rt. Hon. Earl of Kimberley:

"The power of self-government was taken from the people and nothing was given to them in return, but courts of Justices and an administrative want was thus created which is now severely felt and which it is sought to supply by the provisions of the present Ordinance for facilitating the administration of Village Communities. . . . The objects which the Government have had in view could therefore only be allowed by reverting to the former system of native self management".⁹⁹

The object of inspiring the former system of native self management was a significant feature in the Village Communities Ordinance. For instance, under this Ordinance the rule making power regarding the village affairs such as constructing bridges, school rooms, regulating fishing according to local customs, the prevention and abatement of nuisances and deciding the number of councillors to be associated with

⁹⁶. *ibid.* section 20

⁹⁷. *ibid.*

⁹⁸. *ibid.*

⁹⁹. C.O. 54/474, Despatch to the Rt. Hon. Earl of Kimberley by the Colonial Secretary.

the President in the trial of cases and so on, was in the hands of the Village Committee, which comprised six men elected by the inhabitants of the respective village.¹

The Village Tribunal had the power to try breaches of any rules made by the inhabitants of the villages and to exercise civil and criminal jurisdiction in petty matters.² For example the Tribunal had the power to consider 'all cases in which the debt, damage or demand shall not exceed Twenty Rupees and the party defendant is a resident within the sub-division' and all concern whatever involving debt or damage not exceeding One Hundred Rupees.³

However, it should be noted that the Village Communities and Tribunals were not relaxed from the authority of the Central Government as the supervision of the Village Communities⁴ and the appellate jurisdiction over the Village Tribunals⁵ were within the powers of the Government Agent. Moreover, the amendments made to the Village Communities Ordinance in 1889 provided that the Chief Headman, who was a Government officer, should be appointed as the Chairman of every Village Committee in his division.⁶ Until 1924, the Chief Headman remained as the Chairman of the Village Committee. Although the councillors of the Village Tribunal were inhabitants of the village elected by the residents themselves, the President of the Tribunal was a Government official appointed by the Governor and in case of any difference of opinion between the President and the councillors, the opinion

1. Village Communities Ordinance, section 6

2. *ibid.* section 21

3. *ibid.* section 21(1) (2)

4. *ibid.* section 11

5. *ibid.* section 32

6. *ibid.* section 47.

of the President prevailed and was taken as the decision of the case⁷ and these would have been the reasons for villagers to look at Village Communities as the executive arm of the Government. Hence,like the early developments in local government,under the Village Communities Ordinance,too,the official element continued to be introduced as a significant feature of Village Communities. Yet it could be argued that the introduction of Village Tribunals under the Village Communities Ordinance introduced a relationship of a partnership between the Central Government and the Village Communities in the island. As has been discussed earlier, the main object of this Ordinance was to facilitate the administration of justice in rural areas,in addition to the Supreme Court,District Courts,Court of Requests and Police Courts which had been introduced under the Courts Ordinance of 1889 and which were established island-wide, and the establishment of the Village Tribunal could be regarded as a successful attempt. For example,the statistical data,tabulated below,show the efficient and the important role played by the Village Tribunals in the island.

Year	Number of cases		Amount settled		Appeals to the G.A.		Appeals to the Governor
	C	Cri	C	Cri	C	Cri	
1896	1910	3156	502	610	211	75	15
1897	2905	3970	870	2444	142	103	16
1898	3011	3376	632	496	179	233	18
1899	1944	3420	529	621	90	608	16
1900	1735	3174	523	612	158	209	11

Table III -Village Tribunals,North Central Province
Source:Administrative Reports of the Government Agents,1896-1900

7.ibid.,proviso to section 23.

At this stage there were Municipal Councils constituted for the larger towns such as Colombo, Kandy and Galle and there were Village Communities for each of the villages in the country. In between these sets of towns there were many increasing and thriving towns in the island which were too large to be brought within the scope of the Village Communities and too small, either according to the population or for other reasons, to fall under a municipality for the purpose of administration. Hence, it was necessary to establish a local council to carry out the essential duties of a town which was too small to become a Municipal Council and too large to fall under the administration of a Village Community. ^{The} establishment of Urban and Town Councils at this stage would have been the ideal solution, but in the event these authorities were established only in 1939 and 1946 respectively. Prior to the establishment of Urban and Town Councils, the Government had taken various measures to meet the problem of administering the essential day-to-day affairs of these growing towns and it is significant to note that most of the steps taken by the Government in this respect were derived directly from developments in English local government, which should first be noted.

III. Developments of local government in England: its influence in British Ceylon

As has been discussed earlier, this was the period of local government reform in England. Hart and Garner

have described the situation in local government during this period as "a chaos of areas, a chaos of franchises, a chaos of authorities and a chaos of rates".⁸ Hence, it is significant to identify variations in relations between English central and local government. As Smellie has pointed out:

"Between 1832 to 1888, the relations between the Central Government and the local authorities were influenced by three new problems: the relief of destitution in a new industrial era when the predominance of the theory of laissez faire among those who had to vote made any control difficult to get, the safeguarding of the people's health in entirely new conditions . . . when little was known about the nature of disease or the methods by which it could be controlled, the fumbling search for a form of Government which would be representative and competent."⁹

Hence the creation of a new Board of Local Government in 1871 could be seen as one of the main reforms which altered central-local relations after the introduction of the Poor Law Act in 1834. The Local Government Board was formed to take over the functions of medical and health services which were in the hands of the Privy Council, the public order duties which were under the Home Office and all the work of the Poor Law Commissioners.¹⁰ This reform has been regarded as "an undoubtedly wise and indeed a necessary change" which, however, resulted in somewhat of an unfortunate outcome.¹¹ The Poor Law Commissioners formed a major and a well organized part of the staff of the new Board¹², and for this reason they had more powers and a tighter control over local authorities.¹³

Discussing this episode, Dr. R. M. Jackson

8. Hart and Garner, op.cit., p. 28

9. K. B. Smellie, A history of local government, 4th edition, London, George Allen and Unwin, 1968, pp. 42-43

10. Jennings, op.cit., p. 55, Jackson, op.cit., pp. 267-268

11. Jackson, op.cit., pp. 267-268

12. ibid.

13. ibid.

points out:

"from its very start, the new department tended to regard local authorities as being more in the nature of local agents than as being independent bodies exercising powers in their own rights."¹⁴

According to Professor Robson's observations, local authorities in England, during the period under review, were:

"no longer partners in a common enterprise, but only junior partners or mere administrative agents of the central powers."¹⁵

Meanwhile, this had its effects in the relations between Central Government and local authorities in British Ceylon. During this period a number of local Councils were established under various Ordinances for the purpose of administering the growing towns and Central Government had created at least partially bureaucratic governing bodies for this purpose, thus introducing local authorities more or less in the nature of local agents. For example, in 1876 Local Boards were introduced under the Ordinance of Local Boards of Health and Improvement, No. 7 of 1876 and some years later, in 1892, the Small Towns Sanitary Ordinance was enacted for the purpose of administering small towns which were rapidly growing both in numbers and in size.

1. Local Boards of Health and Improvement

The primary object of the Government in introducing the Local Boards of Health and Improvement to the island, as stated in the debates, was to "provide for the improvement and sanitation of many of the increasing and thriving towns in the island, towns that were too big to be brought within the scope of the Gamsabhawa Ordinance (Village

¹⁴. ibid.

¹⁵. W.A. Robson, Local government in crisis, G.A. and U. Ltd., 1968, pp. 203-204.

Communities Ordinance),and not sufficiently important either from the necessary element in the population or for other reasons for the introduction of municipal institutions."¹⁶

Hence,the Local Boards of Health and Improvement were established in certain towns which were not selected for the introduction of either Municipal Councils or Village Communities.¹⁷

The Local Boards of Health and Improvement could be introduced as partially democratic local bodies as the Board consisted of three elected members out of six.The rest of the members were appointed by the Governor and the Government Agent or the Assistant Government Agent,who was the co-ordinating officer of the Central Government located in provinces,was the Chairman of the Board.¹⁸

With regard to the authority of the Local Boards of Health and Improvement,it is clear that they had very limited powers. The Boards could,subject to the approval of the Governor in Council,make by-laws and levy assessment rates,and also they were in charge of roads,other than the main roads,street lighting,water supply,markets and so on, within their areas.¹⁹ All the powers and functions of Provincial and District Road Committees were brought under the operation of this Ordinance to avoid any conflict of jurisdictions.²⁰

2.Small Towns Sanitary Boards Ordinance

On the other hand the Small Towns Sanitary Ordinance was enacted for the purpose of small towns which were rapidly growing both in numbers and in size. In introducing

16.The Ceylon Hansard,Session of 1876-1877,p.5

17.C.O.57/68,The report of the Legal Secretary on Local Boards of Health and Improvement

18.Local Boards of Health and Improvement Ordinance,section 5(1)

19. ibid.,sections 30,43,56,60 and 62

20. ibid.,sections 2(a) and (b) and proviso for section 2.

this Ordinance, the Minister of Local Government stated:

such
"the introduction of/an enactment as this has been necessitated by the very rapid growth both in numbers and size of small townships which are inhabited by a densely packed native population who have not very advanced views as to the sanitary value of cleanliness and whose daily habits are certainly not in consonance with any such views. These localities are generally situated on some main thoroughfare and it is absolutely necessary that within them the ordinary laws of sanitation should be observed not only in their own interests but, in order that these places may not become nurseries of epidemic disease".²¹

The main object of this Ordinance was to make provision for the imposition of a sanitary rate in certain localities. The most striking feature of the Sanitary Boards was that they were purely bureaucratic institutions as they consisted of the Government Agent as the Chairman, the senior officers in the district of the Public Works and the Medical Departments and not more than four nor less than two members nominated by the Governor.²²

A common feature of the local bodies which were introduced during the period under review was their lack of sufficient powers to carry out their functions. The desire of the Central Government to restrain the grant of powers to local authorities was a significant factor during this period. For example, in 1896, the Board of Improvement for the town of Nuwara Eliya Ordinance, No. 20 of 1896, had to be enacted as a special law for the establishment of a Board of Improvement for the respective town. The object of this Ordinance was to abolish the Local Board which was functioning at Nuwara Eliya and to provide another Board with more powers for the improvement and sanitation of the town. In introducing this

²¹. The Ceylon Hansard, debates of the Ceylon Legislative Council, session 1892-93, p.2

²². Small Towns Sanitary Board Ordinance, section 10.

Ordinance, the Minister of Local Government stated the reasons which induced the Government to introduce this measure:

"The reasons are that the Government was approached by petition by the inhabitants of Nuwara Eliya who desired that the Local Board of Nuwara Eliya should be abolished. The Local Board of Nuwara Eliya also at a meeting expressed a wish that their functions should cease and that the Local Board of Nuwara Eliya should cease to exist. Having abolished the Local Board of Nuwara Eliya it was necessary to constitute in its place some other authority to carry on the work of improvement in Nuwara Eliya and to provide for the sanitation of the town".²³

The main reason for this decision was the lack of power of the Local Board of Nuwara Eliya to carry out the necessary functions. However, even after the abolition of the Local Board at Nuwara Eliya, the establishment of the Board of Improvement for the town neither had sufficient powers nor introduced a democratically elected body. This Board too, consisted of the Government Agent of the Province, the Assistant Government Agent of the District and three other official members.

The ultimate result of all these attempts made by the Central Government to develop the system of local government through the introduction of various kinds of local authorities was the creation of dependent bodies of local government with very few powers to carry out their routine functions. Furthermore, the decisions taken by the local authorities were always according to the policies of the Government and this was due to the reasons of their reliance for

23. The Ceylon Hansard, 26th October 1896, p.9.

finance²⁴ and staff upon the Central Government. The Choksy Commission, which was appointed in 1955 to examine the nature and scope of local government in the island, stated:

"the period after 1850 shows therefore, a desire on the part of the Government to associate the people in the task of the administration of local areas on a democratic basis up to a point. These changes were of fundamental importance in the development of local institutions in this country, although it must be remembered that these local bodies were not in a position to carry out policies largely detached from those of the Central Government. Naturally being backed by the Government both in finance and staff these bodies were unlikely to initiate policies unacceptable to the Government".²⁵

Consequently, it is apparent that during the 19th century, although a number of local government institutions were introduced, most of the councils were faced with the problem of insufficient powers to carry out the essential duties within their areas. Hence, most of the important functions were undertaken by the Central Government. Moreover, as has been discussed earlier, most of the councils consisted of nominated members, making the local government institutions the executive arm of the Central Government, instead of being local self-government institutions with members elected within the localities. Thus, at the end of the century local government, which comprised together nearly three hundred and ninety-five authorities with three Municipal Councils, nineteen Sanitary Boards, thirteen Local Boards (including the Board of Improvement for the town of Nuwara Eliya) and about three hundred and sixty Village Communities, functioned under the direct supervision and control of the Central Government. The most significant feature to be noted

24. Infra, Chapter Eight

25. S.P.No.33 of 1955, p.9.

in local government during this period was/that the majority of the local councils had to rely on the decisions of the Central Government. For instance in 1910 Leonard Woolf, who was the Assistant Government Agent of the Hambantota District, had reported with regard to the situation of the Local Board of Health and Improvement:

"The loss of the opium rent at one time looked as if we should be in a serious position, but now that Government has granted us a refund of 75 percent for at least one year we are safe until the end of 1911. When if it is properly managed we ought to begin to draw a substantial grant as a grant-in-aid school. With such a grant and careful management the Board should be able to run the school well, but, if eventually the whole opium revenue is lost, I am afraid that the District School Committee will have to take over the school".²⁶

Again he had reported in 1910:

"at the end of 1908 when Government sent out the circular about the new opium system, I wrote to the Government Agent pointing out that the Sanitary Boards of Tangalle and Hambantota would be crippled in a year or two".²⁷

These two records signify the extent of the influence of Central Government extended to local government institutions and the consequence of decisions taken by the Government. Due to all these reasons it could be argued that, during the period under review, the local government institutions were functioning more or less as agents of the Central Government.

The most characteristic example with regard to the growing tendency of introducing "centre controlled" local government institutions during the early 20th century was the

26. Leonard Woolf, *Diaries in Ceylon, 1908-1911*, The Ceylon Historical Journal, 1962, Volume ix, p.182

27. *ibid.* pp.146-147

enactment of the Local Government Ordinance, No. 11 of 1920. This was introduced under the recommendations of the Local Government Commission of 1916, which was appointed to inquire into and report upon 'the existing provision for and the machinery of local government in the rural areas in the island in regard to matters of sanitation, education and communications and to advise as to what steps it is desirable to take for their improvement'.²⁸ Discussing the enactment of Local Government Ordinance of 1920, the Choksy Commission had pointed out that, this was introduced mainly:

"to give effect to an unmistakable and clear demand by the public for a larger control of and a greater share in the administration of these local affairs".²⁹

However, it could be argued that the Local Government Ordinance was not able to provide either a larger control or greater share in the administration to the public in their local affairs. A few points could be mentioned in this respect. Under the Local Government Ordinance, provision was made for the establishment of District Councils for all parts of the island excluding the municipal areas. The District Councils were of three kinds, namely, Urban District Councils for larger towns, Rural District Councils for less advanced portions and General District Councils where areas were dotted over with local concentration of population and the general conditions were more or less uniform. Similar to the previous introductions of local government institutions even under the Local Government Ordinance, there was no provision

28. The Report of the Local Government Commission of 1916

29. S.P. No. 33 of 1955, p. 10

30. ibid.

made to enable these District Councils to consist of elected members only. For instance, the Urban District Councils and General District Councils consisted of not less than six nor more than twelve members and only two-thirds of the membership of such Councils were elected. Moreover, a Rural District Council had four to eight members, all of whom were nominated by the Governor.

Furthermore, under the Local Government Ordinance of 1920, a Local Government Board was established, for the guidance, assistance and control of the three types of District Councils.³¹ The Local Government Board could be regarded as a branch of the bureaucracy, as it consisted of a Chairman who was a public officer and four official and four unofficial members.³² All these officers, official and unofficial, including the Chairman, were nominees of the Governor.³³

The powers and functions of Urban District, Rural District and General District Councils extended to the general administration, regulation and control of all matters relating to public thoroughfares, public health, public services and general local wants and interests.³⁴ The Councils were to function under the general control of the Local Government Board. The Local Government Board had the power to supervise and control the District Councils, to allocate among them such grants or other sums as might be voted by the Legislature towards local government, to examine and supervise

31. Local Government Ordinance, No. 11 of 1920, section 4(1)

32. *ibid.*, section 4(2)iii

33. *ibid.*, section 4(2)iv

34. V. Kanesalingam, A hundred years of local government in Ceylon, 1865-1965, Modern Plastic Works Publishers, 1971, p. 20.

the system of communication, sanitation and local public works in force within their areas and to examine and co-ordinate the by-laws made by the District Councils from time to time.³⁵

The introduction of District Councils to the island demonstrates characteristically the difficulties and failures in transplanting bureaucratic local government institutions in a country. It should be noted that the District Councils were set up taking the County Councils and County Boroughs in England as examples. However, this experiment was not a fruitful one. A few points could be mentioned in this respect. In the first place Members of Parliament and the general public were reluctant to accept the new Councils. For instance, when a Select Committee was appointed to report on the Bill of the Local Government Ordinance, considerable apprehension was expressed by members of the Committee and others that the effect of this Bill would be to destroy the powers of Village Committees.³⁶ Secondly, the failure of the Central Government to develop enthusiasm for the proposed District Councils within the very first years of their introduction indicates the reluctance of the public to accept such institutions as local Councils in this form in the island. For instance, between the years 1921 and 1931 there were only eleven Urban District Councils in Ceylon. The general public openly displayed their unwillingness to vote for the establishment of District Councils. However, for

35. Local Government Ordinance, No. 11. of 1920, section 6

36. The Ceylon Hansard, 25th February 1920, p. 86.

the establishment of the District Councils the people's vote was essential, as according to the provisions of sub-section 2 of section 4 of the Local Government Ordinance, it was a necessity that the Local Board should take into consideration the decision of the people residing in the particular area when a new council was to be established. In the year 1923 the attempts made by the Government to create four new District Councils at Badulla, Batticaloa, Kurunegala and Moratuwa were unsuccessful. Protests against the establishment of District Councils were made by the inhabitants through public meetings, petitions and telegrams.³⁷ According to the Annual Report of the Chairman of the Local Government Board of 1923, the reason alleged for this opposition was the "fear of increased taxation and the imposition on local authorities by the Local Government Board of costly schemes and of the domination of the councils by an autocratic Central Board".³⁸ One of the petitions addressed to the Legislative Council elaborates vividly, the reasons for this opposition.

"The memorialists do believe that the intention of His Majesty's Government in the establishment of such Boards is the welfare of the people; but the memorialists beg leave to point out that in its operation the Board has proved to be an engine of oppression and hardship. The following facts will disclose to your Excellency the nature of the hardships:

1. The inhabitants own bits of property which are small. To erect houses fulfilling the demands of the Board in respect of size, shape etc., of the buildings make it impossible for most of these lands to be built upon, and the lands have to be left to themselves in most cases.
2. The fines imposed on the people in cases such as failure to keep their compounds clean have been far too severe. Don Mathes was fined three times in succession at the rate of Rs.5 each

37.C.O.57/2/2, Report on the establishment of District Councils

38. Annual Report of the Local Government Board for 1923, p.4.

- time. This fine was imposed for letting leaves remain on a land of which he was the owner, but on which no one lives. Such a fine takes the bread out of his family for about a week. Its severity, it is feared, is not realized by those who impose it on the people of the village.
3. This year a new tax is levied on the paddy fields. The circumstances referred to above render the crops wholly useless to their owners. Your Excellency's memorialists believe that a tax on their staple food was abolished several years ago.
 4. Another new form of hardship has been inflicted on the people within the last fortnight. Some generations back a few dhoby families [washermen] were brought into the village as a help to the villagers, and these dhobies did their work without any hindrance and were remunerated by the people. There are only nine dhoby families consisting of four men and twelve women. Each of these does not get on an average in cash over Rs. 1.50 per annum from each of the families they serve. For about three months of the year they suffer great hardships by reason of the river turning brackish. On the 16th instant the Korale Muhandiram summoned the dhobies to appear before him on the following day, which they did. He ordered them to obtain licenses forthwith on payment of Rs. 3 each. They explained their difficulties, but on no account are they to wash without a license. In consequence all the dhobies have struck work, and the inhabitants of the village are experiencing very great hardship.
 5. The morning tea of the ordinary villager almost invariably consists of "hoppers". It sometimes happens that what is in excess of the day's need is sold. It seems to be the intention of the officers of the Sanitary Board to regard this as a sufficient pretext to tax the poor woman who bakes this kind of food, primarily for the use of her own family. In Seeduwa, there being no estates or mills, "hopper" trade is impossible, except near the railway station, where the people come together. Such a tax as this, if persisted in, will add considerably to the burden of the poor, and will be regarded by the villagers as both unjust and unkind."³⁹

This implies that one of the primary reasons for the general public to oppose for the establishment of the District Councils was the increase of taxes. It should

39. Ceylon Legislative Council Debates, 25th February 1920, p. 85

be noted that during this period the average income per head was £3 in Ceylon, whereas in England it was £50. Thus, it is obvious that the taxes under the Local Government Ordinance which imposed great hardships and sufferings became a burden especially to the peasants. Moreover, another point could be mentioned as a reason for the opposition of the general public for the establishment of District Councils. As described in Chapter One the majority of the population in Sri Lanka are Sinhalese and most of them are Buddhists. According to the Buddhist religion, several acres of land were donated to the temples as gifts from the King. Describing the rules governing these temple lands, the Kandyan Member of the Legislative Council pointed out:

"Most of the temple lands are royal endowments emanating from the piety and religious zeal of the ancient Sinhala Kings, and the intention of these Kings was that never under any circumstance should the temples which they were endowing suffer from any cause, and they imposed or threatened terrible pains and penalties upon anybody who caused or tried to cause loss or damage to these temples however trifling in character it might be. This is a characteristic feature in practically all the religious grants of which we have any knowledge."⁴⁰

The grant of a "sannas"⁴¹ made to Niyamgampaya Vihare at Gampola for instance, demonstrates vividly the reason for the opposition of the people with regard to the taxes imposed on temple lands. In this instance, the King after gifting lands to the Vihare had declared with all solemnity:

"He who shall cut, break, or take even a blade of

40. ibid., p. 90.

41. The deed of a temple land.

grass or any wood or fruit or anything belonging to Buddha shall be born as a perataya (evil spirit) but any one who shall make any offerings and protect the same, render any assistance shall enjoy felicity in the Divyalokas and enter into Nirvana. He who shall take by force anything that belongs to Buddha with intent to appropriate to himself or give it to others shall become a worm in ordure for a period of 60,000 years."⁴²

With regard to this "sannas", the Kandyan Member in the Legislative Council had said:

"Under the present Bill[Local Government Bill] the Chairman of the District Council who causes the sale of any temple land for non payment of taxes will have the cheerful prospect before him of remaining a worm for full 60,000 years!"⁴³

Thus, it could be argued that this reason too would have added lot of weight to the decision of the people to reject the establishment of District Councils under the Local Government Ordinance of 1920.

However the most interesting episode in the establishment of the District Councils was the attitude of the Legislative Council members with regard to the introduction of these Councils throughout the island. As pointed out earlier, generally there was no demand for these Councils. Meanwhile, in 1923, a motion was introduced in the Legislative Council by the Member for Eastern Province requesting ^{that} the Government should take all such steps as might be necessary to bring the Local Government Ordinance of 1920 into operation throughout the island. The motion was accepted by the Government and a Bill was prepared, the principal purpose of which was to effect the repeal of sub-section 2 of section 9 of the Local Government Ordinance.

⁴².Ceylon Legislative Council Debates, op.cit., p.81

⁴³.ibid.

which provided that no District Council was to be constituted until local option had been taken into consideration. It should be noted that this sub-section was not in the Local Government Bill when it was introduced into the Legislative Council, but was an amendment accepted by the Government on strong representation from unofficial members.

However, in November 1923, on an amendment moved by a nominated unofficial member, Sir Ponnambalam Ramanathan, on whose representation the above "local option" principles had been introduced, the reading of this Bill was deferred until further information was supplied by a Committee, regarding the establishment of District Councils.⁴⁴ Meanwhile, the Government appointed a Select Committee of the Legislative Council to consider the working of the Ordinance relating to District Councils, Local Boards, Sanitary Boards and Village Communities and to make such recommendations as would make it possible to extend local self-government institutions throughout the country.⁴⁵ The recommendations given by this Committee and the Local Government Commission⁴⁶ gave divergent views of the lines on which local government should be developed and until the Donoughmore Commission was appointed, the question of the extension of local government remained in abeyance.

Concluding Remarks

It is clear that, during the formative period of the development of local government in British Ceylon, it was essential to have supervision and control over the

44. S.P.No. 33 of 1955, pp. 10-11

45. The Report of the Select Committee on Local Government, S.P.No. 36 of 1928

46. Infra, Chapter Four.

newly-introduced local government institutions. If it had not been for the exercise of pressure from the Central Government it is quite probable that most of the local authorities would not have taken steps, particularly in public health and sanitation, which were urgently required, especially during the periods of wide-spread epidemics, on national grounds as well as for the constituents. With regard to the Ceylonese experience, in this context, it is apparent that the Ceylon Government was significantly enthusiastic in applying this power, at times even overwhelmingly. The establishment of the Local Government Board could be pointed out as an example in this respect. However, despite these few instances, all in all it is difficult to conclude that the Central Government had overwhelming powers over the local authorities. Almost all the Councils were branches of the bureaucracy, which consisted of elected as well as appointed members. Nevertheless, as pointed out this was necessary to improve local conditions and facilities during the period under review. Moreover, the Government took certain steps in removing the bureaucratic element from local government institutions during the early 20th century, and this was with regard to Village Communities, one of the most popular types of councils during this period. As discussed earlier under the Village Communities Ordinance, the Chief Headman of the village, who was a Government official, was appointed as the Chairman by the Central Government and the members of the Village Committee had no power to elect him.⁴⁷ By the enactment of the Village Communities (Amendment) Ordinance, No.9 of 1924, provision was made by the Legislative Council to

47.C.O.57/212, Proceedings of the Legislative Council of Ceylon, 20th March 1924.

the effect that "the members of the Village Committees should have power to elect their own Chairmen".⁴⁸ In fact, in 1948, the then Minister of Local Government, in discussing the changes that took place in central-local relations during 1920s stated that, the amendments to the Village Communities Ordinance made in 1924 had "marked a great advancement in the direction to a less controlled system".⁴⁹

Consequently, it is apparent that during the period between 1856 and 1930, the system of local government had developed rapidly with the introduction of various types of local government institutions. The most noteworthy feature with regard to this development was the official element in almost all the local government councils. Although this made the local councils act according to the Central Government's policies, it could be argued, as pointed out earlier, that it was necessary during the formative period. However, in conclusion it could be pointed out, especially with reference to later developments which will be discussed in forthcoming Chapters, that this formative period of modern development in local government was the starting point of a relationship more or less that of an agent between the Central Government and local authorities of the island.

48. *ibid.*

49. *Forward to the Village Committee Gazette*, Volume I, No. I, August 1948, by Mr. S. W. R. D. Bandaranaike, the Minister of Local Government.

Chapter Four

Developments in local government with special reference to developments in central-local relations:Part Two,1928-1983

From the point of view of local government, the period under review is generally important for several reasons. On the one hand, it was in 1948 that the country recovered the status of independence for the first time since 1505. On the other hand during the period 1928 to 1983 there were various changes in the structure of local government which had its effects in the relationship between the Central Government and local authorities of the country. For instance, the Donoughmore Constitution of 1931 had made several provisions for the development of local government, unlike the Constitutions introduced in 1912, 1920 and 1924. As Ursula Hicks observed:

"The repercussions of these political changes (which took place during 1912 to 1931) on local government were not direct except of the Donoughmore Constitution. . . . The Donoughmore Constitution had a double interest for the development of local government. It was a unique experiment of applying the essence of British organisation of a local authority Council at the central level. The State Council was planned to be both executive and legislative. On the executive side it was intended that it would work through committees which would report to the whole Council, just as the Standing Committees of the London County Council report to the whole Council."¹

Moreover, during the post-independence period the Government had taken various measures to re-organise the structure of local government by introducing different types

1. Ursula Hicks, Development from below, Clarendon Press, Oxford, 1961, p. 65.

of local Councils, the latest being the introduction of Development Councils for the purpose of decentralising the local authority administration of the country. Hence, it is necessary to discuss the structural changes in local government during the period 1928 to 1983 to identify the variations, if any, in the relationship between the Central Government and the local authorities of the country. For this purpose this Chapter will outline the Donoughmore recommendations and the subsequent reforms during 1930 to 1948, and the variations which occurred in the relations as a result of these structural changes in central and local government. Discussions of the post-independence period will be especially directed to consider the effects of the Soulbury recommendations and the general policy of the Central Government towards local government after the introduction of the Ceylon (Independence) Order in Council.

I. The period leading to independence: 1928 - 1948

At the beginning of the year 1928, there were a number of local government institutions in the country. As discussed in Chapter Three the local government bodies in the island included Municipal Councils, Village Councils, Local Boards of Health and Improvement, Sanitary Boards, a Board of Improvement for the Town of Nuwara Eliya and the District Councils.² As pointed out earlier³, the common and the most characteristic feature of all these Councils was that they were branches of the bureaucracy. Describing,

2. Supra, Chapter One

3. ibid.

the status of local Councils in 1920s, Sir Ivor Jennings and Dr. H. W. Tambiah have stated:

" . . . there was no place for democratic local government or even for undemocratic local government. Local authorities when established, had to eat into the functions of the Governor and to compete with the local (Government) officials."⁴

It was in this atmosphere that the Special Commission, with the Rt. Hon. the Earl of Donoughmore as its Chairman, arrived in the island in 1927 to report on the working of the existing Constitution.

1. The Donoughmore Commission

On 6th August 1927, the Special Commission chaired by the Hon. the Earl of Donoughmore was appointed by the Secretary of State for the Colonies to:

"Visit Ceylon and report on the working of the existing Constitution and on any difficulties of administration which may have arisen in connection with it; to consider any proposals for the revision of the Constitution that may be put forward and to report what, if any, amendments of the Order in Council now in force should be made."⁵

The Commission, which comprised the Rt. Hon. Earl of Donoughmore as the Chairman and the Rt. Hon. Sir Matthew Nathan, Sir Geoffrey Butler and Dr. T. Drummond Shiels as members⁶, arrived in Ceylon on 13th November 1927 and remained in the country until 18th January 1928.⁷ During their stay in Ceylon they held thirty-four sittings for the purpose of taking evidence, the majority in Colombo and the rest in Kandy, Jaffna, Batticaloa and Galle.⁸ In addition

4. Sir Ivor Jennings and Dr. H. W. Tambiah, The Dominion of Ceylon, the development of its laws and Constitution, London, Stevens and Sons Ltd., 1952, p. 81

5. Cmd. 3131, p. 3

6. ibid.

7. ibid.

8. ibid.

to these sittings, the Commission visited many other parts of the island, although unofficially, to obtain a general idea of the activities of the areas.⁹

The Donoughmore Commission in its Report published in 1928, fully recognised the need for decentralised administration in local government. They observed:

"As an ultimate aim of policy there is obviously much to be said in favour of a future decentralisation of Government upon elected or partially elected local bodies created for this purpose."¹⁰

According to the Commission the most notable feature in central as well as in local government was the primitive character of the provincial government as against the comparatively advanced system of Central Government. For this reason, the Commission was of the view that:

"any further grant/ ^{of} responsibility to the Central Government will emphasise and increase this contrast and such opportunity as may be afforded must be given under the new Constitution to redress the balance by the encouragement of local self-government."¹¹

Hence, before we proceed to analyse the recommendations of the Commission with regard to local government of the country, it is essential to discuss the position of Central Government during the period under review, as well as the reforms suggested in this respect.

i. The position of the Central Government

The Constitution of 1924, as discussed in Chapter Three, had for the first time provided for representative Government as defined by the Colonial

9. ibid.

10. ibid., p. 115

11. ibid., p. 44.

Laws Validity Act 1865; for over one half of the members of the Legislative Council were elected. The Legislative Council consisted of twelve official members and thirty-seven unofficial members ,the latter including three members appointed by the Governor and thirty-four elected members. According to Sir Ivor Jennings and Dr.H.W.Tambiah:

"Responsibility was not vested in the Legislative Council because though that Council had very wide powers, effective control remained vested in the Governor. Under the Royal Instructions, the Executive Council consisted of the Colonial Secretary, the Attorney-General, the Government Agent for the Western Province and such other members as the Governor in pursuance of instructions from the Secretary of State might appoint. In 1928, there were six such others, two official and four unofficial."¹²

As will be discussed in detail subsequently,¹³ for purposes of general administration the island was divided into nine provinces and nineteen revenue districts.¹⁴ The provinces were under Government Agents, most of whom were aided by Assistant Government Agents who resided at the headquarters of districts which were not headquarters of provinces.¹⁵ These officers were appointed by, and were responsible to, the Central Government; their positions will be discussed further in the next Chapter. Describing the provincial administrative structure, the Donoughmore Commission reported:

"the districts are divided into chief headmen's divisions of which there are one hundred and ten; these contain some six hundred and thirteen sub-divisions under superior headmen and the sub-divisions include about four thousand

12. Sir Ivor Jennings and Dr.H.W.Tambiah, op.cit., p.25

13. Infra, Chapter Five

14. Cmd. 3131, p.108

15. ibid.

villages and hamlets, each under a Village Headman They are Government officers."¹⁶

The local authorities on the other hand were allocated with very limited amount of functions.

Discussing this factor, the Donoughmore Commission stated:

"it will suffice here to indicate that these Councils control sanitary works and buildings and markets; carry out conservancy and scavenging, deal with ruinous, dangerous or insanitary buildings, abate nuisances, light streets and public places, maintain all public thoroughfares except the important ones in charge of the Public Works Department and sanction new buildings and alterations to existing buildings. They are empowered to purchase and sell lands and buildings, to enter into contracts, to make public improvements, to provide public services such as water supply, electric light, markets etc. and to appoint officers and servants; they have wide by-law making powers."¹⁷

This could be pointed out as one reason why the Commission suggested that:

"What is needed is "drive" at the centre and "a demand" at the circumference."¹⁸

Furthermore, another reason which prompted the Commission to assume that there was no adequate "drive" at the centre was that, as discussed earlier,¹⁹ the Government had been reluctant to accede to the suggestion of the Chairman of the Local Government Board to use the authority given to it under the Ordinance of 1920 with regard to the establishment of District Councils. Furthermore, the Commission had observed:

"no effective attempt has been made to provide in Colombo a cadre of technical experts, the

16. ibid.

17. Cmd. 3131, p. 111

18. ibid., p. 115

19. Supra, Chapter Three.

members of which would be available on loan at the demand of any Local Board or Council which would need them. No steps have been taken to find a solution of the admittedly complicated problem of financing both existing and future efforts in local administration. Finally, nothing has been done to provide the Chairman of local bodies with adequate clerical assistance although it was generally admitted that upon his personality turned the whole question of the body's efficiency."²⁰

Moreover, there was ample evidence for the Commission to have observed that there is a necessity for "a demand" at the circumference. It has been pointed out that there was:

"apathy towards and ignorance of the conditions which make good local government of a modern type feasible."²¹

With these few factors in mind now we turn to examine the recommendations made by the Commission to reform the Central Government, before we proceed to analyse the changes in local government that took place after the Donoughmore recommendations.

ii. Reform of the Central Government

The Donoughmore Commission recommended that the existing Order in Council should be replaced by a new Order in Council embodying a scheme for a new Constitution, the object of which was to transfer to the elected representatives of the people complete control over the internal affairs of the island, subject only to provisions which will ensure that they are helped by the advice of experienced officials and to the exercise by the Governor

20. Cmd. 3131, p. 115

21. ibid., p. 116.

of certain safeguarding powers.²² Perhaps the most notable feature of the Donoughmore proposals in the context of the present discussion was the fact that the organs of the Central Government should be reformed on the model which was characteristic of the structure of local government authorities in the United Kingdom; a structure which in its essentials had been introduced in Ceylon as the basis of the local government authorities established under the Local Government Ordinance, No. 11 of 1920. The main feature of this structure is found in the establishment of a single tier Council; exercising local legislative and executive functions and operating through a system of committees. Accordingly the Commission had suggested the substitution for the existing Legislative Council of a State Council which was to sit in executive as well as on legislative sessions.²³ Moreover with regard to the committee system the Donoughmore Commission suggested:

"the decentralisation of control from the existing Colonial Secretariat and the arrangement of the departments of the Government into ten groups in charge of Ministers; of whom seven would be elected members of the Council, . . . the remaining three to be called, Officers of State, being the Chief (formerly Colonial) Secretary, the Treasurer and the Attorney-General and the association with each of the seven elected Ministers in the administration of his department of a Standing Executive Committee of the Executive Council."²⁴

Accordingly seven Executive Committees were established for the following subjects.

22. ibid., pp. 47-59 and 149

23. ibid.

24. ibid., p. 149.

- 1.Home affairs
- 2.Agriculture
- 3.Local administration
- 4.Health
- 5.Education
- 6.Public works
- 7.Communications

With regard to the formulation of the Executive Committee, the Donoughmore Commission recommended:

"On the assembly of a new Council, the members would proceed to divide their total number into seven Standing Committees. This division would be affected by Senate ballot, opportunity having been previously given to members to indicate their individual preferences as to the committee on which they should serve. The names having been allocated a further ballot would be held by each committee for the nomination of Chairmen for appointment by the Governor."²⁵

Each committee was to exercise general supervision over the departments placed under its management. The Chairman of each committee was in the position of a Minister in charge of those departments of Government which dealt with the matters within the purview of the committee.²⁶

According to this system local government came under the Department of Local Administration along with Land Settlement, Survey and Local Option. The Chairman of the Executive Committee and the Head of the Department of Local Administration were empowered to carry out the duties as the heads of local government institutions. As an overall conclusion it could be said that the Donoughmore Commission introduced

25. ibid., pp. 47-48

26. ibid.

various important changes in the structure of Government so as to bridge the gap between "representative Government" and "responsible Government".²⁷ However, as will be discussed subsequently,²⁸ the Executive Committee system did not meet with the success that had been anticipated. With regard to the Executive Committee system, Sir Ivor Jennings and Dr. Tambiah were of the opinion that:

"It was inevitably a difficult Constitution to work, but it was in fact worked, if not always without friction, from 1931 to 1947."²⁹

Moreover, the introduction of the committee system in no sense was a success. As Ursula Hicks pointed out:

"This idea of transplanting that subtle organism of British local government, the committee system, without previous training or experience, was a dismal failure so far as its immediate objective was concerned."³⁰

Furthermore, from the point of view of central-local relations the recommendations of the Donoughmore Commission proposed no variations in the powers of the Central Government to control the local authorities of the country. In fact, after 1931 the local government institutions were under the supervision of the Government Agent, a Government official, who was the head of the region and through him the local authorities came under the Executive Committee for Local Administration.³¹ Until the introduction of the Local Authorities (Administrative Regions) Ordinance of 1946, the local Councils remained under the direct influence of the Government Agent. Thus, a detailed examination of the recommendations and reforms in local government is essential in this respect to analyse the variations, if any, in central-

27. Sir Ivor Jennings and Tambiah, op.cit., p. 143

28. Infra, Chapter Five

29. Sir Ivor Jennings and Tambiah, op.cit., p. 39

30. Ursula Hicks, Development from below, op.cit., p. 65

31. Infra, Chapter Five.

local relations in the country.

iii. The recommendations made by the Donoughmore Commission
and the reforms in local government

The recommendations of the Donoughmore Commission were more or less based on the experience of Basically the implementation of the Donoughmore recommendations British local government./... displayed lessons with regard to the functions of the Central Government and local authorities;which seemed to be wide spread,if not universal in the development of central-local government in other countries. It is clear that during this period there was a tendency for the Central Government to regard the local authorities almost as agents to carry out its policies island -wide. In Maitland's words:

"Every reform of local government has hitherto meant an addition to the powers of the Central Government These two processes have been going on side by side;on the one hand we get new organs of local government, on the other hand we get new organs of Central Government. The organs of Central Government being some or other of those high officers of State who, according to constitutional usage, form the Cabinet."³²

Discussing Maitland's view, Hart and Garner were of the opinion that in the nineteenth century, with the growth of the institutions of local government, central control was gradually created.³³ According to Jackson:

"Looking at the central-local relationship in the few years before the 1939 war, it is clear that there was a tendency for the centre to regard local authorities as being almost
of England

32. F.W. Maitland, The constitutional history, Cambridge University Press, 1926, p. 498

33. Sir William O. Hart and Professor J.F. Garner, Hart's introduction to the law of local government and administration, 9th edition, Butterworths, 1973, p. 298.

the local agents for carrying out the centre's policy."³⁴

Furthermore, while discussing developments between the 1920s and 1940s he stated that local authorities were being treated as if they were local agents who were not particularly responsible and who had to be watched, checked and made to conform with the ideas of some officials in Whitehall.³⁵ Thus, the administrative control over the details of routine action and over the development and pursuit of policy have been regarded as a characteristic feature of local government during this time in England;³⁶ and with the growth of this control, it has tended to supplant the judicial control.³⁷ Maitland's discussion demonstrate the circumstances in the field of local government in England during the period under review and in these circumstances it is important to examine the recommendations made by the Donoughmore Commission for the reform of local government in Sri Lanka and especially, to analyse the changes proposed in central-local government relations.

a. The Donoughmore recommendations

The Donoughmore Commission presented several suggestions which were significant in implementing a decentralised system of local government in the island. According to Kanesalingam:

"The proposals for the establishment of a new department of Central Government and the setting up of an Executive Committee of the State Council for guiding the policy regarding

34. R.M. Jackson, The machinery of local government, 2nd edition, 1965, p. 273

35. ibid., p. 278

36. Hart and Garner, op.cit., p. 299

37. ibid.

the development of local government in the country were no doubt the most important recommendations of the Donoughmore Commission. Thus far, the ultimate powers of central control lay with the Governor in Executive Council. The Donoughmore proposals meant that these powers were to be transferred from the Governor to an Executive Committee of the State Council and the Council itself would consist of members nearly ninety percent of whom would be popularly elected under a new system of universal adult franchise. That is under the new system of central supervision and directive, the people's representative comprising the Executive Committee of Local Administration would constitute the decisive factor."³⁸

However, it should be noted that none of the recommendations, which will be discussed in the following paragraphs, paved the way to vary the relationship between the Central Government and local authorities of the country.

The principal recommendations of the Donoughmore Commission with regard to local government included the following.

1. The abolition of the Local Government Board, which was introduced under the Local Government Ordinance, No. 11 of 1920³⁹ and the establishment of a special Government Department to take charge of local administration. With regard to this proposal the Commission was of the opinion that:

"We believe the success in the extension of local government will only be attained after experiments of a much more thoughtful and imaginative character than have taken place up to the present, and we believe that a fortunate solution of this urgent problem is beyond the reach of any Commission or Committee, for these would clearly be unable to devote to it an effort extending over a period of years. We advocate, therefore, the concentration in a new Government department of all duties connected with the control and development of popular local

38. V. Kanesalingam, A hundred years of local government in Ceylon, 1865-1965, Modern Plastic Works Publishers, 1971, pp. 43-44

39. Supra, Chapter Three.

government."⁴⁰

This Department was to be placed under the control of an Executive Committee of the State Council, which also was to be responsible for local administration and for the Land Settlement and Survey Departments.⁴¹ The reason for placing local government institutions under a Government Department according to the Commission, was to control and develop local government.⁴²

2. The activities of this new Department were to be two-fold:

1. to supervise the administration of existing local bodies, including municipalities; and
2. to be specially charged with the duty of investigating, preparing and promoting schemes for the extension of local government in the island.⁴³

These were all in the nature of permanent duties of the new Department of Local Government; in addition it had some transitional functions. As the Donoughmore Commission pointed out:

"The new department will doubtless also consider whether effect should be given to what appeared to us to be the general view that, General or Rural District Councils as provided for in the Local Government Ordinance of 1920 should no longer find a place in the system of local administration; and whether Local Board towns above a certain population should become ipso facto Urban District Councils. It might also be considered whether for the present Sanitary Boards which administer the small towns of a Revenue District, brought under the Sanitary Boards Ordinance by proclamation, there should be substituted Town Committees, administering the individual towns"⁴⁴

The Commission had recommended, as has been

40. Cmd. 3131, pp. 116-117

41. ibid.

42. ibid., p. 117

43. ibid.

44. ibid., p. 119.

already stated, the establishment of a State Council replacing the two Councils in existence and, following this principle adopted for the Central Government, it suggested that:

"as regards the Constitution of local bodies we recommend that they should . . . consist exclusively of elected members, the official element coming in as advisers. It is suggested that the election for Town Committees should be as for Village Committees; by adult male suffrage; for the Urban District Councils and Municipal Councils it should be as for the Legislative Council."⁴⁵

Finally, the Commission recommended that the Chairman of Committees and Councils should in all cases be elected by those bodies, unless in the opinion of the Local Administration Executive Committee, no suitable candidate had presented himself or it had become necessary for any reason for the Government to take over the functions of the Committee or Council. Except in such cases no full time servant of the Government, including the chief headman, was, to be eligible for membership or Chairmanship of any Municipal or Urban District Council or of any Town or Village Committee.⁴⁶ However, it must be noted that the Donoughmore Commission made no recommendation either with regard to the functions of local authorities or in relation to the central control over these institutions.

b. Implementation of the Donoughmore recommendations

The recommendations of the Donoughmore Commission were accepted by the Legislative Council without much criticism. In the Despatches which passed between the Secretary of State for Colonies and the Governor, the latter

45. ibid., pp. 119-120

46. ibid., p. 120.

observed that he was in general agreement with the proposals for reform of local administration. However, he had added that he was not happy about the reforms as "they contemplate expenditure on a scale which Ceylon cannot afford in the near future."⁴⁷ The Secretary of State was of the opinion that it was adequate if the British Government confined itself to those questions relating to Central Government only. According to his view, the proposals relating to local government raised complex questions which only those with long experience of the traditional methods of rural and Village Communities could solve.⁴⁸

Nevertheless, under the Donoughmore recommendations, the Ceylon (State Council) Order in Council 1931 was enacted and an Executive Committee of Local Administration was elected by the State Council to supervise, control and develop local government. A Department of Local Government under the Commissioner of Local Government was created with the inauguration of the new Constitution and Assistant Commissioners were appointed to the various districts of the island to take over the supervision of local government from the Government Agents,⁴⁹ thus establishing the Department of Local Government, Mines and Salt, Fisheries and Acquisition of Land for Public Purposes, under the Minister and the Executive Committee of Local Administration.

The Report of the Choksy Commission of 1955, which will be discussed in the forthcoming paragraphs,

47. Despatch from Governor Sir J.H. Stanley to the Rt. Hon. L.S. Amery, Secretary of State, dated 2nd June 1929, C.O. 54/991/9

48. *ibid.*

49. Sir Charles Collins, Public Administration in Ceylon, Royal Institute of International Affairs, London, 1951, p. 132.

described the developments in local government after 1931 in the following terms.

"The changes after 1931, therefore, show certain definite lines of consistent policy, namely,
1. the encouragement of the development of local government institutions;
2. the grant of wider powers and duties to these bodies;
3. the extension of franchise to permit basically all local inhabitants to participate in local government;
4. the withdrawal of the official element from the composition of these Councils; and
5. the abolition of purely bureaucratic boards like Sanitary Boards, Road Committees and Local Boards.⁵⁰

Nonetheless, in 1947 in the eve of independence, Mr. S.W.R.D. Bandaranaike, the then Minister of Local Administration stated:

"The excessive centralisation to which Colonial Government is prone, has in effect produced an unbalanced form of Government which must be borne in mind in effecting the change from a Colonial administration to National administration. As I have tried to show earlier, the great importance of local government in the general governmental system of any country is now generally recognised; while therefore, we must try to obtain transfer of power in respect of the Central Government. We must not lose sight of the need to set up an adequate and satisfactory system of local-self government, if a well balanced National Government is to be achieved."⁵¹

Therefore, it is significant to note that the views of the Choksy Commission in 1955 and of the Minister of Local Administration in 1947 presented some differences over the reforms made after the Donoughmore recommendations. It should be emphasised that, after the Donoughmore recommendations, various amendments were made to the existing Ordinances concerned with local government. The Government had also taken measures to provide the country

50. Report of the Commission on Local Government, (The Choksy Commission), S.P.No.33 of 1955, p.17

51. Extract from a speech made by Mr. S.W.R.D. Bandaranaike, the Minister of Local Administration, March 1947.

with new local Councils, acting according to the recommendations. Hence, it is important to identify the extent of the application of these reforms and to consider whether these changes had served to create any difference in the relationship between the Central Government and the local authorities. Thus, to analyse the actual impact of the Donoughmore recommendations, we shall be discussing the developments in local government between 1931 and 1948.

c. Developments in local government: 1931 to 1948

The developments in local government during the two decades prior to the attainment of independence in 1948 undoubtedly demonstrate the eagerness of the Central Government to introduce the elective principle at the local level. However, as will be apparent later, these developments were by no means able to change the relationship between the Central Government and the local authorities of the country. For this reason, even in 1948 the local authorities were functioning more or less as agents of the Central Government, just as they had been in the early 1920s.⁵² Therefore, we shall examine the various amendments to the Village Councils Ordinance and to the Municipal Councils Ordinance; the establishment of Urban and Town Councils and the enactment of Local Government Service Ordinance, Local Authorities Election Ordinance and the Local Government (Administrative Regions) Ordinance, to analyse these products of the Donoughmore recommendations. To begin with attention will

52. Supra, Chapter Three.

be given to the amendments to the Village and Municipal Councils Ordinances.

c(i).The amendments to the Village and Municipal Councils Ordinances

As discussed in the preceding two Chapters,⁵³ the ancient Gamsabhawas⁵⁴, were re-introduced to the country as Village Councils, under the Village Councils Ordinance of 1871. The amending Ordinance, No. 24 of 1889⁵⁵, which granted a few more powers as discussed earlier⁵⁶ to Village Councils, was in fact a consolidating Ordinance and introduced no new principles. Other amendments to the main Ordinance between 1889 and 1908 gave some added powers to Village Councils, but not to any substantial extent. Most of the advances made in Government policy regarding Village Council administration came about in 1924 with the enactment of the Village Communities Ordinance, No. 9 of 1924, discussed in Chapter Three.

Following the principles set out for the development of local government in the Donoughmore Report, namely, that there should be more elected members and that the official element, if it was to continue at all, should be only advisory, the procedure regarding the conduct of elections was clarified with the enactment of Ordinances No. 9 of 1932 and No. 37 of 1933. Under these measures provision was made for dividing village areas into wards, each of which returned a representative to the Council, and the election of the Chairman became the statutory responsibility of the

53. Supra, Chapters Two and Three

54. Supra, Chapter Two

55. Supra, Chapter Three

56. ibid.

members of the Committee. With regard to these amendments the Choksy Commission observed:

"The most striking feature of the development of rural administration in this period was the introduction of the principle of debarring minor or chief headmen from membership of Village Committees."⁵⁷

As discussed in the previous Chapter, the minor or the chief headman, who was a member or the chief of a Village Committee prior to 1932, was a Government officer directly linked with the central administration.

The Village Councils Ordinance was further amended by Act No. 60 of 1938. According to the Choksy Commission:

"continuing the same pattern of development, the passing of the Village Councils Ordinance, No. 60 of 1938, into law was an event of the utmost importance to local government."⁵⁸

However, from the point of view of central-local relations it could be argued that the Amendment Act, No. 60 of 1938 was not remarkably important as it made no difference to the relations between the Central Government and the local authorities of the country. The object of this Ordinance, as well as the newly-introduced amendments, could be pointed out as evidence in favour of this argument. The object of this enactment was stated as being:

"to substitute in the Village Communities Ordinance, No. 9 of 1924, in place of the thirty-four sections relating to Village Committees, sixty-one new sections based for the most part on the provisions of the Local Government Ordinance, No. 11 of 1920 and designed as far as possible to co-ordinate the powers, functions and duties of Village Committees with those of District Councils."⁵⁹

57. S.P. No. 33 of 1955, pp. 14-15

58. *ibid.*, p. 15

59. Preamble to the Act No. 60 of 1938.

With the enactment of this amending Ordinance, the Village Councils became corporate bodies with perpetual succession and with the power to hold property, to tax lands and to make by-laws on a variety of subjects, including the regulations of markets, fairs, water supplies, roads, public health and public services.⁶⁰ Apart from granting these powers, no measures were taken to reduce the means of control by the Central Government. In fact by the enactment of this amending Ordinance the audit of the accounts of Village Councils became a statutory responsibility of the Auditor-General.⁶¹

However, developments with regard to the Municipal Councils took a different line from the developments in Village Councils as an amendment to the Municipal Councils Ordinance made provision for the Chairman of the Council to be elected, instead of appointed by the Central Government. This enabled the municipalities to have a fully elected Council. This no doubt reduced the amount of interference from the Central Government with Municipal Council affairs. As pointed out in the preceding Chapter⁶², prior to 1935, the Municipal Councils were also under the Chairmanship of Government Agents, who were officers of the Central Government, and consisted of councillors elected by householders. Subsequent legislation,⁶³ altered the Constitution of the Councils by reducing the proportion of elected members from two-thirds to half.⁶⁴ By 1935, there were three Municipal Councils in the island, in Colombo, Kandy and Galle. Under

60. Village Councils Ordinance, No. 60 of 1938

61. *ibid.*, section 48(2)

62. *Supra*, Chapter Three

63. *ibid.*

64. *ibid.*

the Colombo Municipal Council(Constitution) Ordinance, No.60 of 1935,a new Constitution was given to the Colombo municipality,which provided for the election of a Mayor and also made provision for its application with the necessary modification to any other municipality.⁶⁵ In 1938 by Proclamation published in the Government Gazette,this was applied to the Kandy and Galle municipalities,⁶⁶ giving all three municipalities elected Chairmen and members.

c(ii).The establishment of Urban and Town Councils

The establishment of Urban and Town Councils in Sri Lanka could be presented as the most important step taken in accordance with the Donoughmore recommendations. This introduction made the local inhabitants democratically responsible for local affairs.The Urban Councils Ordinance, No.61 of 1939, was brought into operation from 1st January 1940 and the Town Councils were established under the Town Councils Ordinance,No.3 of 1946. Important aspects of these two measures will be discussed in turn.

The Urban Councils Ordinance 1939 mainly reproduced the provisions of the Local Government Ordinance, No.11 of 1920,exclusive of the provisions which relate to the General and Rural District Councils.⁶⁷ Introducing the Urban Councils Ordinance,the Minister of Local Administration stated:

"The Local Government Board is now abolished.
The Local Government Board was a Board created

65.Colombo Municipal Council(Constitution)Ordinance,No.60 of 1935,section 60(2)

66.Government Gazette,27th May 1938

67.Administrative Report of the Commissioner of Local Government,1939,pp.3-4.

to supervise the work of these local bodies
and I think it is unnecessary."⁶⁸

The major amendments this Ordinance brought
in were fourfold:

- 1.the abolition of the Local Government Board and the
vesting of its powers and functions partly in the
Commissioner of Local Government;
- 2.the abandonment of the 'local option' principle continued
in the Local Government Ordinance;⁶⁹
- 3.the provision that Urban Councils should consist of not
less than six,nor more than twelve members,and of the
number of members prescribed for each Council two were
to be elected;
- 4.the Government Agent or the Assistant Government Agent,
would cease to be an ex-officio member.⁷⁰

These changes no doubt introduced a more
democratic system of local government to the island,especially
when the provision for the nomination of members by the
Governor was repealed by the Amending Ordinance No.51 of
1942,which also reduced the minimum number of members
comprising an Urban Council from six to four. However, it
should also be noted that although by establishing the
Urban Councils,the Local Government Board was abolished,
provision was not made for the newly-established Urban

68.Hansard,27th June 1939,p.2073

69.Supra,Chapter Three

70.S.P.No. 33 of 1955,pp.13-14.

Councils to be free from any kind of supervision from a higher authority. Introducing the Urban Councils to the island, the then Minister of Local Administration, Mr. S.W.R.D. Bandaranaike, declared:

"Many of the necessary powers of control and supervision vested in the Local Government Board have been distributed between the Commissioner of Local Government and the Executive Committee of Local Administration as found necessary."⁷¹

As will be discussed in detail subsequently,⁷² the Commissioner of Local Government and the Executive Committee of Local Administration were branches of the bureaucracy which alone were responsible to supervise the local authorities in the island.

Nonetheless, again in 1946 the Government decided to extend democracy further and to make local inhabitants democratically responsible for local affairs:⁷³ this was given effect with the introduction of the Town Councils Ordinance, No. 3 of 1946. The report of the Legal Secretary on the establishment of Town Councils clearly signifies that the intention of the Government was to do away with bureaucratic institutions such as the Local Boards and Sanitary Boards. In his report, the Legal Secretary stated:

"Some years ago strong representations were made for the abolition of Sanitary Boards on the ground that they were not elected bodies and that consequently areas subject to their control were being denied the opportunities of local self-government afforded to areas of the class

71. Hansard, 27th June 1939, p. 2074

72. *Infra*, Chapter Five

73. S.P. No. 33 of 1955, p. 16.

for which Urban Councils and Village Committees had been established. It was therefore decided to establish new local authorities in the areas of the class for which Sanitary Boards had hitherto been constituted."⁷⁴

Consequently, in 1946 twenty-four Town Councils were created under the Town Councils Ordinance. The powers and duties of Town Councils were almost entirely on par with those of Urban Councils; the main difference being that the number of members of the Town Councils was limited to not less than three and not more than eight and the power of a Town Council with regard to taxation was strictly limited to a rate on the annual value of immovable property not exceeding nine percent.⁷⁵

Although these two types of Councils indicate the desire of the Central Government to introduce local authorities in accordance with the recommendations of the Donoughmore Commission, they could not drift away from the authoritarianism^{of} the Central Government, as the Councils of both types still had to function according to the policies of the Central Government. This was expressed during the debate of the Town Councils Ordinance by one of the opposition members:

"I agree that in the early stages it is essential that these Town Councils should be under the guidance and direction of the Central Government. . . . When these Councils have gained sufficient experience and will have found their feet, so to speak. When that stage is reached . . . I hope that . . . the control exercised by the Central Government may be released."⁷⁶

It is understood that even the governing
the
party, especially / then Minister of Local Administration,

74.C.O.54/991/13, The Report of the Legal Secretary, 1946

75.Town Councils Ordinance, No.3 of 1946, section 173

76.Hansard, 6th December 1945, p.7532. From the Speech of Mr.Tyagaraja (M.P. for Mannar).

had the idea that these newly introduced local authorities were too dependent on the Central Government. Mr.S.W.R.D. Bandaranaike, the then Minister of Local Administration, during the debate on the Town Councils Ordinance said:

"There is the important matter of policy about the relations that should exist between the Central Government and local bodies on matters of wide national policy. I must confess that there has been the destruction of our system of local government which was fairly efficient for those times, the entire destruction of that system and the substitution for it of a highly centralised system of Government."⁷⁷

Accordingly, the above discussion on the newly introduced local government institution emphasises the fact that, during the period under review, the local authorities of the country were functioning more or less as agents of the Central Government. The speech delivered by the Minister of Local Administration, introducing the Town Councils Ordinance to Parliament demonstrate the situation of local self-government and the central-local relations in the 1940s.

"Local self-government deals really with a good many functions which are also exercised by the Central Government. For instance there are services such as electricity over which they have power as a utility service for the local authority. But the general policy of electricity is also in the hands of the Central Government. In the case of roads and so on the same position arises. In the case of health, the same situation arises. The real need is for a much more adequate clear cut definition of the precise relations of the Central Government with local authorities, where the Central Government policy to some extent overlaps local government policy."⁷⁸

However, it is clear that those who were connected with the central administration at this time had

⁷⁷. *ibid.*, p. 754

⁷⁸. Hansard, 1st March 1946, p. 356.

failed to realise that local authorities too have a useful role to play in the administration of the country especially, on a partnership basis as it had been during the ancient time.⁷⁹

Nonetheless, although no measures were taken to improve the relationship between the Central Government and the local authorities of the country during the period under review, it is clear that the Government had given some thought for the improvement in local government, as the local authorities were brought under a consolidated Local Government Service and a unified system of local authority elections in 1946. Moreover, the enactment of the Local Government (Administrative Regions) Ordinance of 1946, decentralised the functions of the Department of Local Government through the appointment of Assistant Commissioners for each district.

c.(iii).The enactment of the Local Government Service

Ordinance, the Local Authorities Elections Ordinance, and the Local Government (Administrative Regions) Ordinance

The Local Government Service, established in 1945, appears to have been an innovation which had no parallel at that time in the British Empire.⁸⁰ By this Ordinance provision was made for the establishment and incorporation of a body of persons for the constitution and regulation of a Local Government Service, the object

79. Supra, Chapter Two

80. C.O.54/991/9, The Report of the Legal Secretary on Local Government Service Ordinance, 1945.

being to make provision for a unified Local Government Service in Ceylon. Under the Local Government Service Ordinance, the powers of the local authorities to appoint and dismiss their officers and servants were taken away and vested in the Local Government Service Commission.⁸¹ The Commission, as will be discussed in detail later,⁸² consisted of the Commissioner of Local Government and four other persons.⁸³ Earlier, under the Local Government Service Bill, it had been suggested that the nominations should be made by the Governor, but during the Committee stage of the Bill this was deleted and the Minister was empowered to nominate suitable persons.⁸⁴

Under the Local Authorities Elections of Ordinance/1946 a central authority was introduced to conduct the election of local authorities. The Commissioner of Elections (Local Bodies) was the sole authority with regard to the elections of local authorities and he was appointed by the Governor. An Assistant Commissioner of Elections, Election Officers and Assistant Election Officers, who were to help the Commissioner were also appointed by the Governor at his discretion.

Under the Local Government (Administrative Regions) Ordinance of 1946 the island was divided into administrative regions; for each region an Assistant Commissioner was appointed to exercise certain powers, functions and duties of a Government Agent and of the Commissioner of Local Government. Of this Ordinance the

81. ibid.

82. Infra, Chapter Five

83. Local Government Service Ordinance, No. 43 of 1945, sections 3, 4 and 5

84. C.O. 54/991/9, op.cit., note (80).

Legal Secretary had stated:

"In spite of the rapid advance in recent years towards local self-government, local authorities are not yet in sole charge of their administrative areas and Government Agents and the Commissioner of Local Government still exercise, discharge and perform certain powers, functions and duties which should be exercised, discharged and performed by officers called Assistant Commissioners of Local Government who were especially appointed and trained for that purpose."⁸⁵

The above discussion reveals that ,even on the eve of independence, the local authorities were not allocated with any extra powers and they were functioning under the direct supervision and control of the Commissioner and Assistant Commissioner of Local Government.⁸⁶ This emphasises the fact that even the Donoughmore Commission was influenced by the tendency towards central control of the local authorities which had been developing, as discussed earlier, since 1856.⁸⁷ It should be noted that during the period under review there were structural developments in the field of local government. As the Committee appointed in 1939, to review the level of Government expenditure, including central grants to local authorities, observed:

"The development of local government since (the Donoughmore Commission) has been phenomenal. Village Committees with greatly increased powers and elected Chairmen are in charge of village affairs. Urban District Councils with elected Chairmen have replaced Local Boards in all but one town. A new Small Towns Ordinance to replace the Sanitary Boards by democratic bodies is in the course of preparation. Reconstituted municipalities with elected Mayors have replaced the old Municipal

85.C.O.54/1001/1, The Report of the Legal Secretary on the Local Government (Administrative Regions) Ordinance, 1946

86. This will be discussed in detail in Chapter Five

87. Supra, Chapters Two and Three.

Councils of Colombo, Kandy and Galle. The establishment of one other municipality is under consideration."⁸⁸

However, as pointed out these developments brought no change in the relationship between the Central Government and the local authorities emphasising the fact that the Government was reluctant to reduce its control over local authorities. The Central Government took little or no interest in providing the necessary legislative power to the local authorities in carrying out additional duties. Long delays took place for the enactment of Ordinances which granted additional powers to local government institutions. Referring to this, the Mayor of the Colombo Municipal Council was of the opinion:

"The period was one of political transition in Ceylon inaugurated with the introduction of the Donoughmore Constitution in 1931. The position of the Municipal Council was not appreciably affected by the fundamental change that took place in the Central Government and any hopes it may have had that this change would accelerate the reform of its own Constitution which it had long been seeking, were soon shown to be fallacious. It was not in fact until the extended life of the first State Council in December 1935 that the long awaited Colombo Municipal Council (Constitution) Ordinance finally passed its third reading."⁸⁹

It must be noted that the Municipal Council (Constitution) Ordinance of 1935, made provision for an elected Mayor for municipalities for the first time in the country.⁹⁰

Furthermore, the Mayor of the Colombo Municipal Council had pointed out:

88. Commission Report, Part I, Organisation and Cadre of Public Departments, S.P.No. 14 of 1939, para. 71

89. Administrative Report of the Chairman (Mr. W.C. Murphy) of the Municipal Council, Colombo, S.P.No. 28 of 1936, p. 5

90. Supra, p. 129

"Generally speaking however, it must be admitted that the results of the first four and half years working of the new regime have been from a municipal point of view disappointingly meagre."⁹¹

Thus, it could be argued that at the end of the Donoughmore era, it appeared that the Government had not taken many measures to grant more autonomy to the local authorities. With this discussion in mind, we turn to analyse the changes that took place in central-local relations during the post-independence period.

II. The post-independence period: 1946-1984

1. 1946 to 1948: The eve of independence

In July 1944, the British Government announced that a Commission would be sent to Ceylon, under the Chairmanship of Lord Soulbury:

"in order to examine and discuss any proposals for constitutional reform in the island which have the object of giving effect to the declaration of His Majesty's Government on that subject, dated 26th May 1943 and after consultation with various interests in the island including minority communities concerned with the subject of constitutional reform to advise His Majesty's Government on all measures necessary to attain that subject."⁹²

The Soulbury Commission spent several months in Ceylon during 1944-1945. The most noteworthy feature in Soulbury recommendations was the non-recognition of the need to integrate reform in local government into the constitutional reforms recommended in their report.

⁹¹op.cit., note (89)

⁹²Cmd. 6677, p. 3

The Commission recommended the introduction of a House of Representatives and a Senate.⁹³ The House of Representatives was to consist of one hundred and one members, ninety-five of them to be elected and six to be nominated by the Governor-General. On the other hand fifteen of the seats of the Senate were to be filled by persons elected by members of the House of Representatives in accordance with the system of proportional representation by means of the single transferable vote and fifteen were to be filled by persons chosen by the Governor-General at his discretion.⁹⁴ The Executive Committees and their officers (the Chief Secretary, Legal Secretary and Financial Secretary), introduced by the Donoughmore Commission⁹⁵ were replaced by a system of Cabinet Government.⁹⁶ In place of the Board of Committee members, a Cabinet of Ministers responsible to the legislature was introduced and one Minister was appointed by the Governor-General as the Prime Minister. The Ministers other than the Prime Minister were appointed by the Governor-General on the recommendation of the Prime Minister.⁹⁷ The Prime Minister determined the functions to be assigned to each Minister⁹⁸, and the Governor-General appointed a Permanent Secretary to each ministry on the recommendations of the Public Service Commission.⁹⁹

It seems that the failure to recognise the need to integrate proposals for local government reforms into the constitutional reforms recommended by the Soulbury Commission offended the officers of the Department of Local

93. *ibid.*, pp. 114-115

94. *ibid.*

95. *Supra*, pp. 116-117

96. *Cmd. 6677*, p. 88

97. *ibid.*

98. *ibid.*

99. *ibid.*

Government. Thus in his report for the year 1945, the Commissioner of Local Government observed:

"Self-government in any country cannot be a success unless it is based on a system of sound and efficient local self-government, nor could the good Government, of the country be ensured without the closest cooperation and collaboration between the Central Government administration and the local authorities, both urban and rural. It is therefore, a matter for regret that this fact is often overlooked and local authorities are not considered a part of the administrative machinery of the country. Some of those connected with the Central Government administration consult local authorities and seek their assistance when they need their help, but completely ignore their existence at other times. A reorientation of policy is called for."¹

However, by the end of 1947, the system of local government comprised, Municipal, Urban, Town and Village Councils which had powers to carry out duties such as sanitation, maintenance of roads, water supply and the supervision of markets within their areas.

In December 1947, the Parliament of the United Kingdom passed the Ceylon Independence Act of 1947 and it is important to examine the changes that took place in the relationship between the Central Government and the local authorities, after the consolidation of independence.

2.1948-1983: Consolidation of independence

It is necessary at this juncture to refer to the failure of the Soulbury Commission to include in their report any recommendation for reforms in local government. For this reason, concurrently with the transfer

¹. Annual Administrative Report and Review of the work and expenditure of Urban Councils, 1944, S.P. No. 21 of 1945, p. 3.

of full political power to the Ceylonese, no changes were made in the structure of local government. As a result, the pattern of local government which had evolved during the pre-independence period continued without any major changes in the legal status, powers or finances of local authorities, especially until the enactment of the Development Councils Act of 1980 which introduced some structural changes in local government. Thus, the most striking feature of local government during the post-independence period was that all the local authorities of the country were functioning under one single central authority for central supervision and control, i.e. the Ministry of Local Government. Moreover, since independence the ministerial location of the Department of Local Government was changed from time to time.² Moreover, during the period under review, although there were instances where the local authorities were able to persuade the Central Government to make amendments to the prevailing Ordinances to overcome the overwhelming controlling power of the Government, it is difficult to identify any noteworthy amendments which substantially changed the relations between the Central Government and the local authorities. However, the amendments to the Local Government Service Ordinance and the introduction of the Local Authorities (Enlargement of Powers) Act of 1952 could be introduced as examples in this respect. The Choksy Commission appointed in 1953, which made an exhaustive study as to how the local government should be developed in Sri

2. 1947-1952 Ministry of Housing and Local Government
 1956-1965 Ministry of Local Government and Cultural Affairs
 1965-1969 Ministry of Local Government
 1970-1975 Ministry of Public Administration, Local Government
 and Housing
 1975-1977 Ministry of Local Government
 1977- Ministry of Local Government, Housing and
 Construction

Lanka was a landmark in the development of local government. Developments during the period 1948-1955 will be examined before we analyse the aftermath of the Choksy Commission, followed by the introduction of Development Councils in 1980.

i. Developments in local government between 1948 and 1955

Developments in local government during the period 1948 to 1955 demonstrate the reluctance of the Central Government to grant more autonomous powers to local authorities. The amendments to the Local Government Service Ordinance and the introduction of the Local Authorities (Enlargement of Powers) Act are two examples of this. The amendments to the Local Government Service Ordinance were made as a result of the strong protests from Municipal and Urban Councils at the decision of the Local Government Service Commission to assume sole authority over appointments, the fixing of salaries and the transfers of employees. Very strong views were expressed on those occasions and both groups, the Municipal Councils as well as the Urban Councils, insisted on the appointment of nominees of these bodies as members of the Local Government Service Commission.³ As a result of these protests, in 1949 the Local Government Service Commission was reconstituted, appointing four members to represent the Municipal, Urban, Town and Village Councils in the island. Yet, as will be discussed in detail in Chapter Five, it could be argued that this amendment made no provision

3. Ceylon Parliamentary Debates, 9th March 1949, p. 2256.

to grant more autonomy to local authorities, as the Minister had power to control the functions of the Local Government Service Commission.⁴

On the other hand the Local Authorities (Enlargement of Powers) Act, No. 8 of 1952, which was enacted to give the local authorities further opportunities to function on their own and independently from the Central Government, offered very little to local authorities. The Choksy Commission was of the view that this Act was a "radical and a generous measure".⁵ It further reported that:

"it had as its main purpose the removal of some of the measures of control which the Central Government had been till then exercising over them and rendering them more autonomous powers in relation to the development of their activities and the expenditure of their funds."⁶

However, by the introduction of this Ordinance the need for the Minister's approval was removed with regard to matters such as the disposal of immovable property,⁷ the establishment and maintenance of any public utility services,⁸ the construction of new roads and the improvement of existing roads⁹ and the appointment of auditors¹⁰; the local authorities were empowered to take such decisions without any prior approval. Of all the extra powers gained by the local authorities the only important one was the power to raise a loan without any prior approval from the Minister. Consequently, it could be argued that, even after the enactment of this Ordinance the Minister still had the power to interfere with the functions of local authorities. Two

4. Infra, Chapter Five

5. S.P. No. 33 of 1955, p. 19

6. ibid.

7. The Local Authorities (Enlargement of Powers) Act, No. 8 of 1952, section 41

8. ibid.

9. ibid.

10. ibid. section 219.

amendments to the Town and Village Councils Ordinances, made under the Local Authorities (Enlargement of Powers) Act, could be pointed out in this respect. According to the amendment to section 54 of the Town Councils Ordinance, the prior sanction of the Commissioner of Local Government was not required to enter into a contract. However, according to sub-section 2 of section 54:

"The Minister may in his direction by Order published in the Gazette declare that sub-section 1 of this section shall not apply."¹¹

Similar amendments were made with regard to the Village Councils, in respect to which the Minister was given a discretionary power to intervene with contracts exceeding Rs.100.¹² Thus, the outcome of the Local Authorities (Enlargement of Powers) Act was very limited and, for the above mentioned reasons, it could be argued that the enactment of this Act in no sense paved the way to the removal of the overwhelming control of the Central Government over the local authorities.

It should be noted that by this time there were seven Municipal Councils in the country. In addition there were thirty-six Urban Councils in the larger towns, thirty-eight Town Councils in the smaller ones and four hundred and three Village Councils. The whole island was thus, covered with a network of elected Councils. Discussing the structure of local government in Sri Lanka, Ursula Hicks pointed out:

11. ibid., section 54(2)

12. ibid., section 39.

"It would be hard to maintain, however, that by and large they have been either responsible or efficient. On the whole the most persistent liveliness seem to reside at the Village Council level; but there the powers and duties are inevitably very restricted. Hence, in a sense the true transition has yet to come."¹³

It was in this atmosphere that a strong Commission of inquiry, under the Chairmanship of N.K. Choksy, Q.C., was set up to examine and report on the nature and scope of local government, the functions of local government authorities and the ways and means of providing them with more revenue.¹⁴ With regard to the Choksy Commission, Ursula Hicks was of the opinion that:

"It numbered only four, but they were leading citizens of great experience and included a Tamil as well as three Sinhalese. The Choksy Report (of 1955) is a document of first-rate importance concerning the way in which local government worked (or did not work) in Ceylon. Unfortunately, the absence of good local government statistics (which still prevails) makes it difficult to determine what weight should be given to the many criticisms which were made."¹⁵

In the formulation of their views and recommendations for changes necessary in local government, the Choksy Commission was guided by a conviction that there was the need to give more flexibility and freedom of action to the local government authorities. For instance, the Choksy Commission observed that:

"The enactment of various laws, governing powers, functions and duties of a wide character to the different local authorities are not the beginning and end of the duty of the centre, a system of graded laws for local authorities standing at different levels only provides

13. Ursula Hicks, Development from below, op.cit., p.160

14. S.P.No. 33 of 1955

15. Ursula Hicks, Development from below, op.cit., p.161.

the framework within which they are to function. Each type of local authority must be duly provided with the ways and means and an adequately trained and equipped staff, so that it can build up a group of services and amenities at a level appropriate to its grade and of a character suited to the distinctive needs, growing population and varied stages of development of each different area. To watch the local government process in action, to take a realistic and balanced view of the trends and tendencies guiding its operation in the various parts of the country, and to adapt its flexibility and responsiveness to the ever changing conditions-physical as well as economic- in which its functions, and then judiciously and with wide discretion to enlarge both its sphere and freedom of activity -within the confines of the overall national policy- will necessarily be the increasing duty and responsibility of the Central Government."¹⁶

These observations made in 1955 clearly emphasise the attitude of the Central Government in fostering changes in the system of local government of the country. It is significant that the Central Government was very reluctant to grant the essential powers to the local authorities and to reduce the overwhelming central controls over local Councils.

ii. The aftermath of the Choksy Commission

Although the Choksy Commission made far-reaching recommendations, including the establishment of Regional Councils at the district level which could handle many functions which were within the domain of Government departments, the Government took no measures to implement them. Moreover, during this period very little progress was made in local government. According to Ursula Hicks:

¹⁶.S.P.No.33 of 1955,p.28.

"In reviewing transition in Ceylon there is thus no steady rate of progress to record as there certainly is in some parts of the Indian system The organizational difficulties should not be sufficient to cause serious trouble to Councils which were interested in the jobs to be done, but it is clear that this is not so. One possible weakness could be that they do not have a sufficient range of powers and duties to make Council work worthwhile It is evident that the Government was of the opinion that a major weakness of Ceylon local government was that its powers were insufficient; for in 1952 a local Government Enlargement of Powers Statute was passed. It is difficult to trace that it affected any improvement. The range of actual services undertaken by most Ceylon local authorities is indeed very limited often little more than elementary sanitary services and minor roads."¹⁷

Furthermore, the United Nations Technical Assistance Programme, which reported in 1963 regarding the situation of the system of local government in Ceylon, had nothing to add to the already listed functions of local authorities. They pointed out:

"It is clear that Ceylon is well provided with local authorities. Practically the whole island is covered with a network of elected Councils. This does not necessarily mean that all are able to operate a high standard Most Councils complain that they have not a sufficient range of powers and duties to make Council work worthwhile. It is clear that the Government shares this view since a Local Authorities Enlargement of Powers Act was passed in 1952. The range of services undertaken by most of the local authorities is indeed very limited and is practically confined to elementary sanitary services and minor roads. This does not stimulate widespread popular interest in local affairs. Primary education for instance, which usually arouses a great deal of interest amongst local Councils is not the responsibility of the authorities in Ceylon. Their education has always been and still is a highly centralised service. Local bodies have no share in its organisation in their own areas."¹⁸

17. Ursula Hicks, Development from below, op.cit., pp.161-163

18. Local government in selected countries, Ceylon, Israel, Japan, United Nations, 1968, p.4.

However, an analytical observation of the period under review presents two intriguing features with regard to the relations between central and local government. Firstly, the period between 1957 and 1980 reveals the different views of the politicians in the country regarding the development of relations between central and local government. Secondly, the incidents which took place during the period between 1970 and 1980 demonstrate the attitude of the Central Government towards the local authorities.

The attitude of the politicians regarding the development of relations between the Central Government and local authorities is demonstrated by the number of attempts made by different political groups which came into power to introduce Regional Councils to the island. As will be apparent later,¹⁹ by the introduction of Regional Councils it was intended to decentralise the administration of the country and this was to enable the local authorities not only to get wider powers but also to function more independently and with less intervention from the Central Government. In 1955 the Choksy Commission, decided that it was important to establish Regional Councils especially to take over the functions of the Kachcheries.²⁰ However, although the Choksy Commission considered that Regional Councils should be established, they pointed out that the Kachcheries should not be wound up immediately. The reason for this decision from the point of view of the Commission was that the local authorities had not reached a sufficient level of efficiency

19. Infra, Chapter Nine

20. The functions of the Kachcheries will be discussed in detail in Chapter Five.

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The recommendation of the Choksy Commission

21.S.P.No.33 of 1955,p.40

22.ibid.,p.41

23.ibid.,p.41,This will be discussed in detail in Chapter
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24.ibid.

25.V.Kanesalingam,op.cit.,p.161.

in their report submitted in 1955,urging the establishment of Regional Councils,helped to add force to the demand of the political party. In the General Election of 1956 the party secured a number of parliamentary seats in the Tamil areas.²⁶ Consequently,the Prime Minister,Mr.S.W.R.D. Bandaranaike,had to give serious and earnest consideration to the demand for the establishment of Regional Councils. A draft Regional Councils Bill was prepared in 1957 and it went even further than the Choksy Commission recommendations. According to this proposal the Regional Councils were to have elected as well as nominated members,including Members of Parliament. A Regional Commissioner was to be appointed as the Chief Executive Officer.²⁷ The Regional Councils were to have the power to appoint their own staff to impose taxes and even to raise loans. However,this draft Bill was not proceeded with by the Government.Discussing this proposal Tressie Leitan points out:

"Communal dissension was the obstacle against which the Regional Councils Bill foundered. For the leader of the Tamil-based Ceylon Federal Party wanted special concessions for the Tamils . . . to be included in the draft Bill."²⁸

For this reason the Government had to withdraw the proposal to establish Regional Councils in the island. It seems that the withdrawal of the draft Regional Councils Bill in 1957 had reduced the motivation to establish local government institutions to decentralise the administration of the country,as after 1957 until 1963 there were ^{no} / proposals to establish Regional Councils in the island.

26.Especially in the North and Eastern Provinces

27.Ceylon Government Gazette,17th May 1957,Part I,section I,
p.169

28.T.Leitan,op.cit.,p.70.

Moreover, the quick succession of Governments from 1959 to 1963 also would have made it impossible for the Government to reconsider the establishment of Regional Councils. However, in 1963, when the Sri Lanka Freedom Party came into power, the Government announced in its Throne speech:

"that early consideration would be given to the question of the establishment²⁹ of District Councils to replace Kachcheries."

In accordance with this statement of its intention to establish District Councils, the Government took a further step and appointed a Committee on the 28th September 1963 for the purpose of carrying out a general survey of the existing administrative machinery of the Kachcheries and the district agencies of the Government and to report on the best and most practical way of replacing the Kachcheries and of decentralising some of the functions performed by Government Departments in the districts for the purpose of establishing Regional Councils.³⁰

This Committee recommended the establishment of Regional Councils in place of Kachcheries and suggested ways of decentralising some of the functions performed by Government Departments in the various revenue districts for the purpose of establishing these Councils. This report which was presented in February 1964³¹, was under consideration by the Cabinet and, in the Throne speech of July 1964, the Government announced:

"a Draft Bill to implement the proposal to establish District Councils will be placed before you for

29. Hansard, 17th July 1963, column 21

30. V. Kanesalingam, op.cit., p. 162

31. Unpublished Report of the Committee headed by Mr. W.D.V. Mahatantila, the Commissioner of Local Government.

consideration."³²

However, due to the General Election in 1965, the Sri Lanka Freedom Party Government had to abandon the idea of establishing Regional Councils in the island. The United National Party Government assumed office following the General Election of 1965 and it was clear that the UNP Government too desired to establish Regional Councils throughout the island. Consequently, in the first Throne speech, the then Prime Minister, Mr. Dudley Senanayake announced:

"My Government will examine the existing structure of the machinery of local government with a view to increasing its efficiency and harnessing the co-operation of all classes of citizens in the administration. With this object in view, earnest consideration will be given to the establishment of District Councils which will function under the control and direction of the Central Government."³³

Accordingly a Bill was drafted and introduced in Parliament; however, it was not proceeded with as a result of the strong opposition from the Sri Lanka Freedom Party to the introduction of Regional Councils.

It is thus clear that, during the period 1956 to 1970, progress in the relations between the Central Government and the local authorities of the country was hindered due to the conflicts between different political parties of the country. At the end of the 1960s, in spite of the attainment of independent status and the other developments discussed above, local authorities still remained as agents of the Central Government.

32. Hansard, 2nd July 1964, column 26

33. Hansard, 9th April 1965, column 106.

Furthermore, the incidents that took place during the period 1970 and 1980 demonstrate the attitude of the Central Government towards the local authorities. During the period 1970 and 1980 there were six hundred and seventy eight local authorities in the island.

Year	Municipal Councils	Urban Councils	Town Councils	Village Councils
1971	12	39	85	542
1980	12	39	78	549

Table IV - The number of local authorities in Sri Lanka

Source: Ferguson Directory 1971 to 1980

The most striking feature during the period under review was the intervention of Central Government with certain local authorities by dissolving them and appointing Special Commissioners or Administrative Officers to carry out their routine functions.³⁴ An analytical evaluation of this factor signifies that since 1973 the number of authorities which were under Special Commissioners or administrative Officers was gradually increasing. The statistical data tabulated below illustrates that the number of local authorities under Special Commissioners had increased from nine percent to forty-two percent since 1973.

³⁴. The provisions with regard to the dissolutions of local authorities will be discussed in detail in Chapters Six and Seven.

Year	Municipal Councils	Urban Councils	Town Councils	Village Councils
1970-71	1	1	5	1
1973-74	3	15	17	14
1974-75	4	17	31	43
1975-76	9	15	37	57
1979	3	4	78	146
1980	3	5	78	220

Table V - Number of local authorities which were
under Special Commissioners or
Administrative Officers

Source: Ferguson Directories, 1970 to 1980

The Special Commissioners and the Administrative Officers were employees of the Central Government. Hence, while the local authorities were under the Special Commissioners instead of the Mayors or the Chairmen, the Councils more or less were under the direct authority of the Central Government. With regard to the policy matters of local Councils it is clear that little or no concern was possible to consider the discretion of the constituents of the area. Thus, at the end of 1970s the local authorities were functioning more or less as agents of the Central Government, as during this period for the above -mentioned reasons, the ultimate supervising and controlling power of local authorities was vested with the Central Government.

iii.The era of decentralised administration:The establishment
of Development Councils

The establishment of District Development Councils in 1981 under the Development Councils Act, No. 35 of 1980, introduced for the first time in this century the relationship of a partnership between the Central Government and local authorities in the island. By this act attempts were made for the development of the country through the elected Development Councils and these Councils were interlinked with the Central Government through the District Minister, who was a member of the Parliament and was also at the same time the President of the District Development Council in his district. In his report in 1978, the Commissioner of Local Government stated:

"the year has seen changes in the scope and organisation of local authorities, changes which were necessary to forge a strong partnership with the centre in the development process. The need for a strong partnership between local and the Central Government, in the matter of development at the district level was duly recognised."³⁵

By this Act all the Town Councils and the Village Councils in the island were abolished,³⁶ and in their place Development Councils were established on a provincial basis.³⁷ The establishment of the Development Councils could be introduced as a landmark in the development of local government, as it signifies the starting point of decentralisation.

35. Administrative Report of the Commissioner of Local Government, 1978, p. 3

36. Development Councils Act, No. 35 of 1980, section 18

37. ibid.

decentralisation of administration in the island. Consequently, the Commissioner of Local Government in his Report for the year 1979, stated:

"It could be emphasised that during the year under review steps to effect some very vital measures at ensuring the peoples fundamental democratic right to participate in governing their own affairs which could be termed as a basic requirement in establishing local authority Councils were taken."³⁸

However, although the establishment of Development Councils changed the structure of local government and introduced decentralised administration to the country, yet it is apparent that the Government was inclined to restrict the powers of local government institutions of the country. The Greater Colombo Economic Commission Law, No. 4 of 1978, and the Urban Development Authority Law, No. 41 of 1978, could be shown as instances in which powers of local authorities were restricted. The Greater Colombo Economic Commission Law provided for the establishment of a Commission known as the Greater Colombo Economic Commission, which consisted of five members,³⁹ appointed by the President,⁴⁰ for a five year period.⁴¹

The interesting point regarding the implementation of the G.C.E.C. was that, within the area of authority of the Commission, the Commission was to:

"exercise, perform and discharge all the powers, duties and functions of a Municipal Council and its officers and servants under the Municipal Councils Ordinance."⁴²

38. Administrative Report of the Commissioner of Local Government, 1979, p. 3

39. Greater Colombo Economic Commission Law, section 1

40. *ibid.*

41. *ibid.*, section 6(2)

42. Greater Colombo Economic Commission Law.

For this purpose, it was enacted under the Greater Colombo Economic Commission Law:

"Where the area of authority comprises the whole of the administration area under the control of any local authority established under the Municipal Councils Ordinance, the Urban Councils Ordinance, the Town Councils Ordinance, the Village Communities Ordinance, the Commission shall be deemed to be the successor of such local authority for all purposes relating to such administration area from the date of coming into operation of section 4 of this Law and such local authority shall be deemed to be dissolved on the date immediately preceding that date."⁴³

Hence, by the enactment of the Greater Colombo Economic Commission Law, the authority of Municipal, Urban, Town and Village Councils respectively was restricted within the area of Authority of the Commission. However, in 1980, according to a policy decision of the Government, the Municipal and Urban Councils situated within the G.C.E.C. area were handed over to the Department of Local Government. The Town Councils and Village Councils which were under the authority of the Local Government Service Commission had to function under the G.C.E.C. until they were dissolved by the ^{establishment of} Development Councils in 1981.

The Urban Development Authority Law of 1978, on the other hand provided for the establishment of an Urban Development Authority for the purpose of promoting integrated planning and implementation of economic, social and physical development of certain areas. Similar to the G.C.E.C., the Urban Development Authority also restricted the powers and functions of the local authorities. The

⁴³. ibid., section 21(1).

Minister had the sole authority according to his discretion by Order published in the Gazette to declare any area to be an Urban Development area,⁴⁴ and according to section 23(4) of the Act:

"No person other than the Authority shall exercise, perform and discharge any powers, duties and functions relating to planning and development within any area declared to be a development area."

Therefore it is apparent that the enactment of the Greater Colombo Economic Commission Law and the Urban Development Authority Law restricted the powers of local authorities of the country.

Concluding remarks

An analytical evaluation of the development of local government since 1928 emphasises unequivocally the fact that there have been structural changes in the field of local government. However, from the point of view of central-local relations it is clear that until 1980 the local authorities of the country functioned as agents of the Central Government. The establishment of the Development Councils in place of the former Town and Village Councils of the island no doubt introduced decentralised administration of local government. However, even the establishment of Development Councils cannot be introduced as a landmark, where the local authorities were released from the entire control of the Central Government as the President of the Executive Committee of the Development Council, which is

44. Urban Development Authority Law, section 3(1).

the executive arm of the Development Council is a member of the Parliament which directly involves the Development Councils with the Central Government. Moreover, as will be discussed in detail in Chapter Ten, the Development Councils Act did not make any provision to relax the controls of Central Government over the Councils. During the same period in England, the situation seems to have been quite different from what prevailed in Sri Lanka. For example, the English Local Government Planning and Land Act of 1980 was introduced as "an Act to relax controls over local authorities."⁴⁵ Part I of the Act specified the relaxation of controls, which limited the powers of the Secretary of State and the Treasury,⁴⁶ and the Minister to supervise local authorities. Moreover, the local authorities gained wider powers after the enactment of this Act. According to section 1 of the Local Government Planning and Lands Act:

- "1(1). Such of the provisions mentioned in Schedule 1 to this Act,
- a. as makes the exercise of any power of a local authority subject,
 - i. to a right of appeal to a Minister; or
 - ii. to the provisions of regulations made by a Minister; or
 - b. as confers upon a Minister any power to give a local authority directions or power to require a local authority to make by-laws; or
 - c. as requires a local authority to make any report or give any notice to a Minister, shall cease to have effect."

As will be apparent later,⁴⁷ no such relaxation of controls was introduced by the enactment of the Development Councils Act. However, it should be noted that,

45. Preamble to the Local Government, Planning and Lands Act, 1980

46. *ibid.*, sections 1(2), 1(2)a, 1(2)b, 1(5)a, 1(5)b

47. *Infra*, Chapters Nine and Ten.

by the establishment of Development Councils,an attempt was made to decentralise the administration which could be introduced as the beginning of a relationship of a partnership between the Central Government and the local authorities of the country.⁴⁸

Accordingly, at the end of 1983,the local government of the country consisted of three types of Councils, namely,Municipal,Urban and Development Councils. However, as the Town and Village Councils had functioned for more than a century,until their abolition in 1980,it is appropriate to discuss the relations between the central and local government in detail in the forthcoming Chapters,with regard to all these five types of Councils.

48.ibid.

Chapter Five

The role of the Central Government in controlling local administration

An interesting feature to be observed in the relations between Central Government and local authorities is the authoritative power possessed by the Central Government to control the local authorities. Discussing the general trend of developments in central-local relations, Rhodes argues that local government is moving from the partnership model to that of agency model.¹ According to Rhodes, one of the reasons why this centralising trend has come about is that Central Government has acquired more powers of detailed control.² According to the Sri Lankan experience, it is clear that the Central Government has excessive powers to keep the local authorities of the country under the supervision and control of the central authority. It has been observed that the local authorities are generally under the control of the Ministry of Local Government and the Departments of Local Government which are situated in each of the twenty-four districts throughout the country. Furthermore, it is interesting to note that local authority involvement in carrying out important services of the island has been limited to activities such as public health, public thoroughfares and public utility services. For instance, according to an analytical examination of the powers and functions of central and local government in Sri Lanka, it has been identified that the education system of the country is wholly carried out by the Central Government through

1. R.A.W. Rhodes, Research into central-local relations in Britain: A framework for analysis, S.S.R.C., 1979, p.75

2. ibid.

the regional officers and that the local government has no direct involvement in this context. Hence, it is important to analyse the framework of the Central Government in connection with local government, especially to assess the powers of the Central Government, so as to decide the reform that is essential for a devolution of Government. For this purpose, in this Chapter we will examine the role of the ministerial and departmental administration of local government, followed by an analysis of the position of other agencies at the centre concerned with local government. It is proposed in this Chapter to examine the educational administrative structure in Sri Lanka and in England, to analyse comparatively the extent of centralization.

I. The ministerial and departmental administration of local government

In 1947, the then Minister of Local Administration, Mr. S.W.R.D. Bandaranaike, in one of his speeches pointed out:

"The excessive centralization . . . has in effect produced an unbalanced form of Government, which must be borne in mind. . . . Therefore, one of the first steps necessary is the re-establishment of local self-government and the decentralisation which this involves as against the previous tendency towards over-centralisation."³

This statement reveals that the Government was interested in decentralising some of those activities of the Central Government. However, according to an analytical comparison of the administrative structure, during the periods

3. Extract from a speech made by Mr. S.W.R.D. Bandaranaike, the Minister of Local Administration, March 1947.

prior to and after 1931, it is interesting to note that there were no variations in the ministerial administration of local government.

As discussed in Chapter Four, until the inauguration of the Donoughmore Constitution in July 1931 there was no Standing Committee or Department for the general supervision of local government administration. In 1931, as will be apparent later, an Executive Committee of Local Administration was established to supervise, control and develop local government and a Department of Local Government was created as the executive instrument of the Committee.⁴ On the other hand, prior to 1931 the Provincial Government Agents, stationed in Kachcheries, were empowered to carry out the routine departmental functions, including the responsibility for co-ordination with the Colonial Secretary, who was the head of the entire system of administration.⁵ Hence, for the purpose of a detailed analysis it is important to discuss the structure of local government administration carried ^{out} /by Kachcheri administration prior to 1931, as well as the departmental administration after 1931.

1. The Kachcheri administration

i. Introduction

It was in 1833 that a uniform provincial administrative system was adopted in the country. As discussed in Chapter Two, prior to 1833, at the centre all legislative, executive and judicial powers were vested in a Governor, who was answerable to the Secretary of State for Colonies and through him to the British Parliament. As a result of the

4. Cmd. 1887, Annual Report on the Social and Economic Progress of the People of Ceylon, 1937, pp. 15-16

5. W.A. Wiswa Warnapala, Kachcheri system of district administration in Ceylon, p. 541, Tressie Leitan, Local government and decentralised administration in Sri Lanka, Lake House Investments, 1979, p. 13. 163

Colebrooke-Cameron recommendations the machinery of Central Government was re-constituted so that the Governor was assisted by an Executive Council of five official members and a Legislative Council was established with nine official and six unofficial members, the latter appointed on a communal basis.⁶ On the other hand, the entire administration was mainly carried out by Government administrators stationed in provinces. According to Tressie Leitan:

"The backbone of the entire system was the provincial administration for it was through the hierarchically arranged provincial structure that the centralised authority of the Government was exercised throughout the country."

In 1883, under the guidance of the Colebrooke-Cameron recommendations, the country was divided into five provinces,⁸ each under a Government Agent, and each province was sub-divided into districts which had Assistant Government Agents as their heads.⁹ "The measure" says Sir Charles Collins, "was intended to be partly one of retrenchment, but its main importance was in establishing a form of local administration suitable to the needs of the country and throughout."¹⁰

Although the number of provinces was gradually raised to nine,¹¹ there was no change in the administrative structure of the country,¹² and the Government Agents were functioning ^{as} administrative chiefs of the provinces.

Technically, the Government Agents were Revenue Officers and initially responsible to the Revenue Department.¹³

6. G.C. Mendis, Colebrooke-Cameron Reforms, Oxford University Press, 1956, p. 50

7. T. Leitan, op.cit., p. 7

8. The five provinces and their chief towns were:
Western Province-Colombo, Central Province-Kandy, Southern Province-Galle, Northern Province-Jaffna, Eastern Province-Trincomalee

9. G.C. Mendis, op.cit., p. 52

10. Sir Charles Collins, Public Administration in Ceylon, Royal Institute of International Affairs, 1951, pp. 61-62

11. The new provinces were: North Western (1845), North Central (1873), Uva (1896) and Sabaragamuwa (1889)

12. Sir Charles Collins, op.cit., p. 7

13. T. Leitan, op.cit., p. 7, 164

The office in which each one was based in the province was known as the Kachcheri,¹⁴ a relic of the Madrasi system of administration introduced by the British India Company when they conquered the maritime provinces of Ceylon in 1796.¹⁵ In early days the term Kachcheri was used in Ceylon exclusively to describe the office of revenue collection, but with the passage of time it became the office of the Chief Civil Authority or the Government Agent of the province.¹⁶ Consequently, the head of the Revenue Department became the medium through which the communications were made with the central administration.¹⁷ As Tressie Leitan points out:

"the line of authority thus extended downwards from the Colonial Secretary at the centre to the Government Agents in the provinces down to the indigenous hierarchy of officials which extended down to the village."¹⁸

It should be noted that it was at the Kachcheri that most of the important powers of the Government at the district level were concentrated and centralised. Moreover, the Kachcheri organisation did not provide any opportunities to the people of the area to participate in local administration.

Nonethelesss, the most interesting and the important feature of the system of administration was the involvement which the Government Agent had with the local authorities, to which we now turn.

14. Since 1970 this office is being called as the Public Secretariat

15. W. Warnapala, op.cit., p.541

16. ibid.

17. T. Leitan, op.cit., p.8

18. ibid.

ii. The role of the Government Agent in relation to local authorities

The Kachcheri organisation, as stated above, was entrusted with a multiplicity of duties which embraced the governmental activity in its entirety. Leonard Woolf, who served in the Ceylon Civil Service for a period of seven years, described the role of the Government Agent in his autobiography.

"one of the extraordinary things about the life of an administrative civil servant in those days was the variety of his work. The Government Agent was responsible for everything connected with revenue and expenditure in his province (other than the expenditure on main roads, public works and major irrigation works) He was responsible for all municipal and local government."¹⁹

The Government Agent officiated as the Chairman in almost all the local government institutions. Even, the establishment of a Village Council under the Paddy Lands Irrigation Ordinance depended upon the discretion of the Government Agent.²⁰ The Provincial and District Road Committees,²¹ the early Municipal Councils²², Village Committees,²³ Local Boards²⁴ and the Sanitary Boards²⁵ had the provincial Government Agents as their Chairmen. Moreover, the Government Agent had the power to nominate members to Local Boards of Health and Improvement.²⁶ The Government Agent of the province or the Assistant Government Agent of the district had ^{exclusive} powers to

19. Leonard Woolf, An autobiography of the years 1904-1911, New York, Hogarth Press, 1961, p. 55

20. Paddy Lands Irrigation Ordinance, No. 9 of 1856, section 3, see Chapter Three

21. Road Ordinance, No. 10 of 1861, section 13

22. Until 1935

23. Village Communities Ordinance, No. 26 of 1871, section 2

24. Local Boards of Health and Improvement, No. 20 of 1896, section 5(1)

25. Small Towns Sanitary Boards Ordinance, No. 18 of 1892, section 10

26. Local Boards of Health and Improvement, op.cit., section 6.

supervise the activities of the local government institutions. For instance, according to the Village Communities Ordinance, regarding the Village Tribunals, the Government Agent was fully authorised to supervise the Tribunal's proceedings.

Section 32 of the Village Communities Ordinance, stated:

"It shall be the duty of the President of any Village Tribunal to report weekly all cases tried before such Tribunal to the Kachcheri to which the sub-division belongs and to forward the journals of proceedings taken by him to the Government Agent to be filed of record in his Kachcheri. The Government Agent shall be empowered to sit with the President and councillors and observe their proceedings and generally from time to time report on such proceedings to the Governor. And it shall be competent for the Government Agent to take action in any case in which any parties thereto may apply to him for relief and to direct further enquiry thereof or to order a new trial or further evidence or to alter, amend, modify or reverse the decision therein."²⁷

Furthermore, if a person felt that he was aggrieved by the decision of a Village Tribunal and had failed to obtain relief in the first instance from the Government Agent, he could apply to the Governor and the Governor, with the advice of the Executive Council, had the power to direct further inquiry or to order a new trial or the taking of further evidence or to alter, amend, modify or reverse the decision.²⁸

With regard to the expenditure of Village Committees, the Government Agent had exclusive powers. The Government Agent was in a position to refuse money to certain Village Communities. Discussing the powers of the Government Agent in relation to financial matters over local authorities,

27. Village Communities Ordinance, op.cit., section 32

28. ibid. proviso to section 30.

W.Warnapala points out:

"All Government Agents, for financial and accounting purposes, were Government accountants under the control of the Auditor-General. There were extensive powers vested in the Government Agent in regard to the supervision of the necessary votes, for example, whether a certain amount of money to be spent by a Village Committee should be spent or not. Before the establishment of the Department of Local Government in 1931, the Government Agent was in a position to refuse money to certain Village Committees."²⁹

Thus, the local government institutions had either the Government Agents, the Assistant Government Agents or some other district officers³⁰ as their Chairmen and were directly under the supervision of the Central Government. The Government Agents who were the co-ordinating officers of the Central Government made the local councils a part of the central authority. Hence, it could be said that prior to the recommendations of the Donoughmore Commission, the Kachcheri administration not only weakened the local government institutions, but also made them extensions of the bureaucracy.

2. Departmental administration

i. Introduction

As discussed in Chapter Four, the Special Commission, which was appointed in 1928, under the Chairmanship of the Earl of Donoughmore, to visit Ceylon and to report on constitutional and administrative changes in the country, reformed the entire system of administration in Ceylon. With regard to the reforms in provincial administration, the most striking feature was the introduction of the seven Executive Committees.³¹ The Commission recommended:

29. W. Warnapala, op.cit., pp. 551-552

30. For example in certain Village Communities, the Mudaliyar was the President

31. Cmd. 3131, p. 30.

"On the assembly of a new council the members would proceed to divide themselves into seven Executive Committees each of which would select its Chairman for appointment by the Governor; the Chairman so appointed being the ministers referred to above and individually responsible with their Executive Committees; to the Council for the direction and control of the Departments. Executive Committees would not be associated with these officers of State in respect of the Departments left in their charge; since the functions of these officers will be largely advisory and the activities of their Departments, complementary of the decisions of the Council."³²

The most important feature to be detected in the administrative organisation after the introduction of the Donoughmore reforms was the transfer of functions away from the Government Agent. The establishment of departmental organisations responsible to the Minister through the Head of the Department to manage most of the activities formerly entrusted to Government Agents reduced their power and influence as provincial administrators. Thus, under the Donoughmore recommendations, activities of the Government which were under the direct control and supervision of the Government Agent were transferred to the respective departmental organisations in the district. The subjects such as local administration, home affairs, agriculture, health, education, public works and public communications were transferred to district branches of departments.³³ The Committee on the Organisation, Staffing and Operative methods of Government Departments, stated in its report:

"the division of Government activity into ten ministries with one Minister (or Officer of State) in charge of each activity in place of general surveillance by the Colonial Secretary, has

32. ibid. p. 149

33. ibid.

necessarily reduced enormously the power and responsibility of the Government Agent, and has led to the appointment of departmental organisations responsible to the Minister to manage many of the activities formerly entrusted to Government Agents.³⁴

This was clearly visible in the field of local government. Under the Donoughmore recommendations local government came under the Ministry of Local Administration, together with Mines and Salt, Fisheries and the Acquisition of Land for Public Purposes.³⁵ A Department of Local Government was created under a Commissioner of Local Government as the executive instrument of the Committee.³⁶ These structural reforms recommended by the Donoughmore Commission did not leave any room for the membership of the Government Agent in its activities and, instead of going through the Kachcheri administration, the local government institutions were to link up with the Central Government through the Minister of the newly established Ministry of Local Administration. It should be noted at this point that, although the reforms made in 1931 by the Donoughmore recommendations put an end to the tutelage of the Government Agent³⁷, this was made complete only after the enactment of the Local Government (Administrative Regions) Ordinance, No. 57 of 1946, which will be discussed in detail later.³⁸

It is important to note at this juncture that the creation of Government ministries and their departments in the respective provinces and districts broke the monopoly of powers enjoyed by the colonial bureaucrat. The supreme position of the Kachcheri and of the Government Agent as a miniature

34. S.P. No. 5 of 1948, p. 137, T. Leitan, op.cit., p. 19

35. Cmd. 3131, p. 149

36. Cmd. 1887, op.cit., pp. 15-16

37. T. Leitan, op.cit., p. 54

38. Infra, p. 11-12.

Central Government in the province, especially in relation to local government, was taken over by the Minister who was the representative of the people. However, it is argued in the following paragraphs that despite these structural changes in the administration, the supreme authority over the local government institutions still lies in the hands of the Central Government. A detailed study of the structure and functions of the Department and the Ministry of Local Government is significantly important to demonstrate the authoritative power of the Central Government over local authorities even after the implementation of the Donoughmore recommendations.

ii. The Ministry and the Department of Local Government

As stated above, under the recommendations of the Donoughmore Commission a Department of Local Government was introduced in 1931 under the Commissioner of Local Government.³⁹ In 1947, under the Local Government (Administrative Regions) Ordinance, No. 57 of 1946, the Governor was empowered to divide Ceylon into administrative regions⁴⁰ and to appoint Assistant Commissioners of Local Government for each region.⁴¹ Under this Ordinance provision was made to define areas for which Assistant Commissioners of Local Government were appointed and to enable such Assistant Commissioners to exercise, discharge and perform within their areas, certain powers, functions and duties of a Government

39. Supra, Chapter Four

40. Local Authorities (Administrative Regions) Ordinance, No. 57 of 1946, section 2(a)

41. ibid., section 2(b).

Agent and of the Commissioner of Local Government.⁴²

Accordingly, it could be argued that the appointment of the Assistant Commissioners of Local Government in place of the provincial Government Agent made no difference with regard to the supervisory powers of the Central Government over the local authorities. The Assistant Commissioners, like the Government Agents, were Government officers appointed by the Governor and were directly responsible to the Central Government. This argument could be demonstrated more profoundly by a study of the structure of the Department of Local Government and its functions to which we now turn.

As the diagram VI given below illustrates, the Commissioner of Local Government is the Head of the Department which is located within the Ministry of Local Government. Four Deputy Commissioners along with a Project Co-ordinator of water supply schemes, function under the Commissioner of Local Government, with the authority to deal with planning and registration, control, development and finance respectively.

42. Preamble to the Local Authorities (Administrative Regions) Ordinance.

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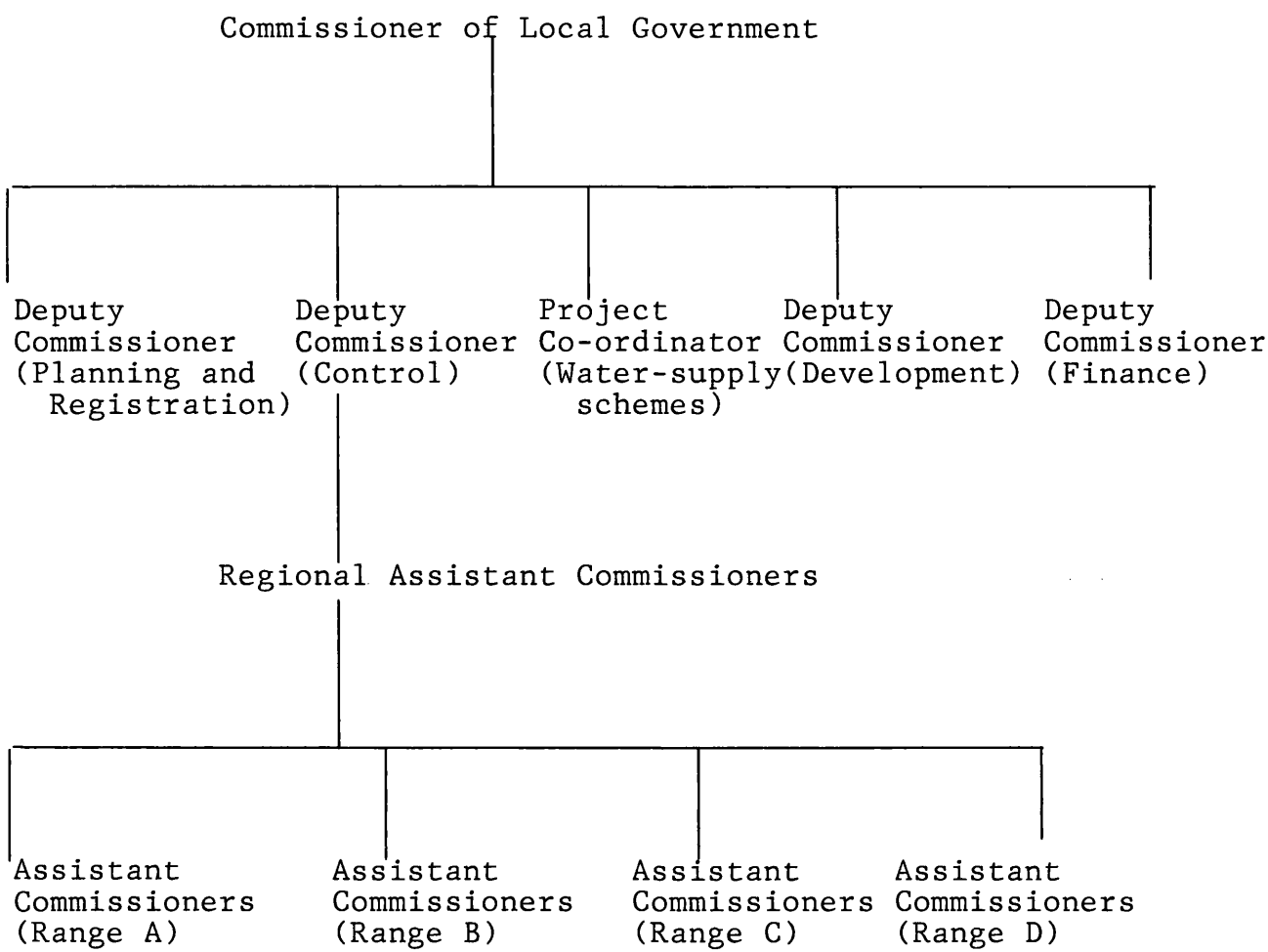


Diagram VI - The Department of Local Government

Source: T. Leitan, op.cit., p. 76.

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The country under the provisions of the Local Authorities(Administrative Regions)Ordinance is divided into four divisions named as "Ranges", which comprises different areas as follows.

- Range A- which includes Colombo,Kalutara,Puttalam and Kurunegala districts;
- Range B- which includes Galle, Hambantota,Monaragala, Ratnapura, Amparai and Matale districts;
- Range C- which includes Jaffna,Mannar,Vavuniya,Trincomalee and Anuradhapura districts; and
- Range D- which includes Kegalle,Kandy,Nuwara Eliya,Matale, Badulla and Polonnaruwa districts.⁴³

A Range Assistant Commissioner is appointed to each of these four "Ranges" and they are directly under the supervision of the Deputy Commissioner (Control). A Range Assistant Commissioner is entrusted with the following functions:

- a.to review and control the work of the Regional Assistant Commissioner of Local Government;
- b.to advise them in relation to their statutory functions;
- c.to consider recommendations made by them; and
- d.to investigate petitions against them.⁴⁴

An Assistant Commissioner of Local Government is stationed in each of the twenty-two districts and he is the key figure in co-ordinating matters between the department and the local authorities. "He acts" says Tressie Leitan, "as the channel of communication between the department and local authorities and the information bureau for the department in relation to all Urban,Town and Village Councils in his district; he presents a quarterly report on them and is consulted on grants and disciplinary measures like dissolutions

43.Administrative Report of The Commissioner of Local Government,1974,T.Leitan,op.cit.,p.75

44.ibid.

of Councils and removal of Chairmen. Periodical conferences are held at the head office and circular instructions keep him informed of Government policy."⁴⁵

As illustrated in diagram VII, given below, the Assistant Commissioners were entrusted with powers to supervise the local authorities.

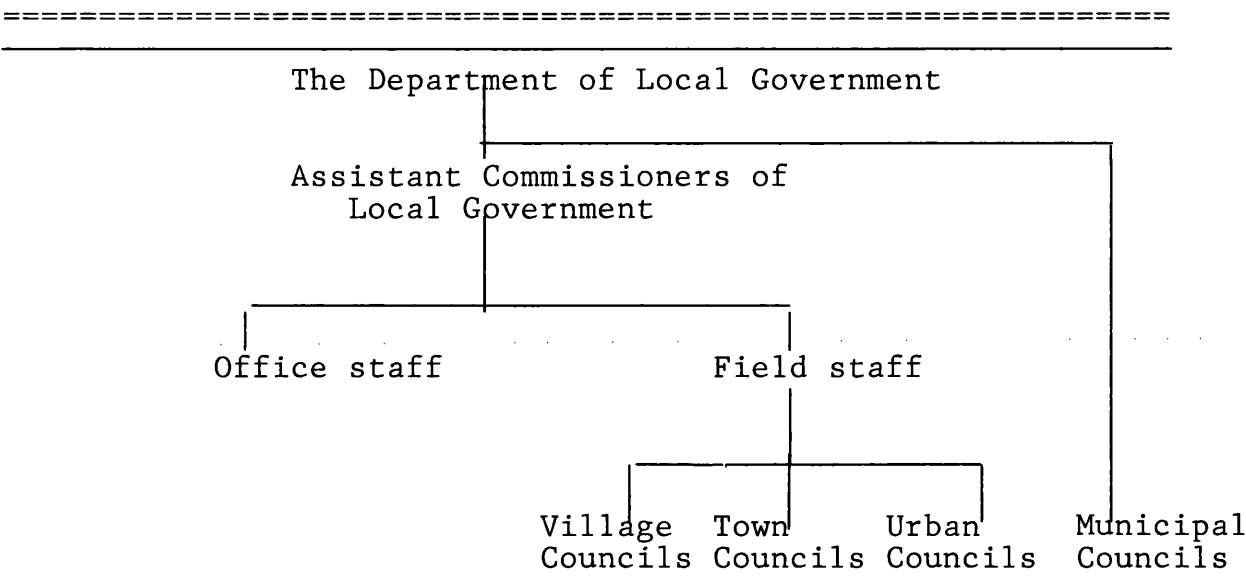


Diagram VII- The structure of the Department of Local Government

Source: T. Leitan, op.cit. p. 77

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An examination of the powers of the Assistant Commissioner reveals that his approval is essential for the local authorities to carry out their functions. For example, in the case of Village Councils, the approval of the Assistant Commissioner was a necessity in every case where a resolution or decision relates:

- a. to the purchase, sale or exchange of any land or building;
- b. to the lease of any immovable property handed over to the committee by vesting order under section 40;

⁴⁵ T. Leitan, op.cit., p. 76.

- c.to the creation of any salaried office, scale of salary or rate of subsistence or travelling;
- d.to the expenditure of any sum of money exceeding rupees one hundred out of the communal fund on any work,scheme or project;
- e.to the formation of any contract or other agreement involving an expenditure exceeding rupees one hundred out of the communal fund;
- f.to the organisation of any scheme for the relief of distress to which contributions are given from the communal fund;
- g.to the allocation of any part of the communal fund for a certain specified period.⁴⁶

Similarly, under Village Council rules made by the former Executive Committee of Local Administration⁴⁷, detailed provision appeared for supervision and control over various aspects of Village Council administration. For example,

- a.(Inspection) Rule 6-the books,accounts,documents and other records of every Village Committee shall be inspected at the office of the Committee by the Assistant Commissioner of Local Government or by an officer authorised by him, once at least in each year.⁴⁸
- b.(Inspection) Rule 8-every work of construction, maintenance or repair undertaken or executed by a Village Committee, which the Assistant Commissioner of Local Government considers necessary to inspect, shall be⁴⁹ inspected by him or by an officer authorised by him.

While the Urban,Town and Village Councils were under the supervision of the Assistant Commissioners of Local Government,the Municipal Councils were operating more or less as autonomous bodies under their Ordinance,subject to supervision by the Minister which will be discussed in detail subsequently.⁵⁰ Also as will be discussed in detail in Chapter Nine, the Commissioner of Local Government and the Assistant Commissioner of Local Government had no supervisory powers over the Development Councils which superseded the Town and Village Councils ^{and,} /like the municipalities,were subjected

46.Village Councils Ordinance,section 53

47. ibid. section 59

48. ibid. Part vi

49. ibid.

50. Infra, Chapter Eight.

to the supervision of the District Minister only.⁵¹

It has been said that the supervision and control exercised by the Assistant Commissioners of Local Government over the Urban, Town and Village Councils were removed by the enactment of Local Authorities (Enlargement of Powers) Act, No. 8 of 1952. According to the Choksy Commission Report:

"The most important change in the post-independence period was the decision of Government taken in 1952 to give the local authorities further opportunities to function on their own and independently of the Central Government. The local Authorities (Enlargement of Powers) Act, No. 8 of 1952- a radical and generous measure- was passed. It had as its main purpose the removal of some of the measures of control, which the Central Government had been till then exercised over them and rendering them more autonomous powers in relation to the development of their activities and the expenditure of their funds.⁵²

As discussed in Chapter Four, since the enactment of the Local Authorities (Enlargement of Powers) Act, the approval of the Assistant Commissioner is not required before effect is given to any resolution or decision of a Village Committee in respect of matters such as the formation of any contract or agreement involving an expenditure exceeding rupees one hundred out of the communal fund or to any scheme for the relief of distress to which contributions were to be made from the communal fund for certain specified purposes.

However, on the other hand, it is difficult to say that the overall supervisory power of the Assistant Commissioner was taken over after 1952. Still the Assistant Commissioner is empowered to supervise the local authorities

51. *Infra*, Chapter Nine

52. *S.P.* No. 33 of 1955.

to a certain degree. For example, under the Local Authorities (Enlargement of Powers) Act, 1952, the Assistant Commissioner of Local Government acting on behalf of the Commissioner has to prepare and transmit to the Mayor, in the case of Municipal Councils, and to the Chairman, in the case of the Urban, Town and Village Councils, a report containing a general survey of the affairs of the Council in each year⁵³ and for the purpose of preparing this report, the Commissioner or the Assistant Commissioners of Local Government are empowered to:

- a. inspect any public building, immovable property or institution used, occupied or carried on by or on behalf of the Council or any work in progress under the direction of the Council;
- b. inspect any book or document in the possession or under the control of any Council; and
- c. require any Council to furnish accounts of income and expenditure, reports or copies or documents relating to the proceedings or duties of the Council or any committee of the Council and such other information as may be considered necessary by the Commissioner of Local Government.⁵⁴

These instances signify that the introduction of Assistant Commissioners of Local Government in place of Government Agents made no provision for the local authorities to escape from the overwhelming authority of the Central Government. Nonetheless, it is interesting to note that the opinion of the Government with regard to the supervisory powers over the local authorities was that such powers are necessary and useful, rather than allowing the local authorities to function as autonomous bodies. For instance, the Choksy Commission⁵⁵ which reported in 1955 pointed out:

"We find that after the Local Authorities (Enlargement of Powers) Act, No. 8 of 1952, which relaxed some

53. Municipal Councils Ordinance, section 315(a), Urban Councils Ordinance, section 209 (a), Town Councils Ordinance section 206, Village Councils Ordinance, section 64(1)

54. Municipal Councils Ordinance, section 315(2)(a)(b)(c), Village Councils Ordinance, section 64(2) (a)(b)(c)

55. Supra, Chapter Four.

control, two Village Committees have been dissolved, fourteen Chairmen have been removed from office and the expenditure of fifty six Village Committees has had to be controlled again by the Assistant Commissioners of Local Government The number of instances, in which control has had to be re-imposed and disciplinary measures taken within the short space of three years after the Local Authorities (Enlargement of Powers) Act of 1952 would indicate the necessity for caution before any further relaxation is permitted. That conclusion has been reinforced by what we learnt in the course of the hearing of evidence and of our visits to various Village Committee areas."⁵⁶

The recommendations of the Choksy Commission were that the local authorities, especially the Village Committees needed increased control over them.⁵⁷ Thus, it could be mentioned that the attitude of the Central Government towards the local authorities is reflected by these recommendations of the Choksy Commission. Moreover, irrespective of the supervision carried out by the Department of Local Government through the Assistant Commissioners of Local Government stationed in regions, there were other authorities which had the power to interfere with local government institutions.

II. Other agencies concerned with local government

As pointed out above, it is clear that the Central Government is empowered to supervise and control the local authorities through the Commissioner and Assistant Commissioners of Local Government. Nonetheless, an analysis of other agencies which are concerned with local government reveals that the authority of the Central Government to keep

56. S.P. No. 33 of 1955, p. 214

57. ibid.

the local government institutions "under the supervision" is relatively greater in Sri Lanka when compared with England. An examination of the powers of the Local Government Service Commission could be important at this point to demonstrate the powers attributed to the Central Government in this context.

1. Local Government Service Commission

i. Introduction

It should be noted that the Local Government Service is the local government equivalent of the Civil Service, consisting of paid employees whose job is to carry out the policy decisions of the elected politicians.⁵⁸ Thus, it could be argued that the local government officers are bureaucrats in the sense that they are appointed and promoted on merit and they carry out their work according to the local authority policies and rules of procedure.

According to the English experience, the local government employees are not recruited under a single employing body. There is no "national" local government service such as the civil service and each local authority has the power to employ its own staff.

Prior to 1945, in Sri Lanka the method of employment of local authority staff was similar to the current system in England. During that period all the local authorities employed their own staff and the power to recruit, promote and dismiss the officers and servants was in the hands of the local Councils. However, since 1945 it seems that there have been

58. Tony Byrne, Local Government in Britain, Penguin Books, Third Edition, 1985, p. 167.

persistent demands for a unified system of local government service. According to the Local Government Service Commission Review in 1952:

"For a number of years representations were made to the Minister of Local Administration and to the Commissioner of Local Government, both by employees of local authorities and by the public on the existing unsatisfactory methods of recruitment, promotion and dismissals of officers and servants employed by local authorities. Charges of nepotism, political patronage, undue influence, in the appointment of officers without suitable qualification were frequently levelled against local bodies. The demand became progressively persistent and the Government felt it necessary to accede to this demand."⁵⁹

The outcome of these demands was the introduction of a central authority known as the Local Government Service Commission in 1945.⁶⁰ The Commission consisted of the Commissioner of Local Government as the Chairman⁶¹, and four other persons, who were non-members of the State Council or of any local authority, nominated by the Minister of Local Government.⁶² Among its powers, the authority was:

- a. to determine all matters relating to methods of recruitment to and conditions of employment in the service and the principle to be followed in making appointments to the service and in making promotions and transfers from one post in the service to another;
- b. to recruit, appoint, promote, transfer, dismiss, retire, interdict or otherwise punish, members of the service and generally to maintain discipline in the service;
- c. to conduct examination for appointments;
- d. to classify the posts in the service into classes or grades;
- e. to determine the cases in which disciplinary action against members of the service may be taken by local authorities;
- f. to call upon any local authority to keep the prescribed records relating to members of the service;
- g. to call upon any local authority to furnish before a specified date such files, other documents or information as the Commission may require;
- h. Upon the failure of the above paragraph (g) to authorise with the approval of the Minister, any member or officer of the Commission to enter the office of the local authority and to obtain such files, other documents or information etc.⁶³

59. S.P. No. 12 of 1952, Review of the work done by the Local Government Service Commission from 1946-1951

60. Local Government Service Ordinance, No. 43 of 1945, section 2

61. *ibid.* section 6(1)

62. *ibid.* section 3 63. *ibid.* section 6(1)(a)-(h).

These powers signify that the Local Government Service Commission is the sole authority with regard to the terms of service of local authority employees. The members of the Commission on one hand were non-participants of local authorities and moreover, when they were appointed to the Commission by the Minister the members became "responsible to the Minister de facto".⁶⁴ Accordingly, the local authority staff belonged not to the local Councils they were attached to but to the Local Government Service Commission which was under the control of the Minister of Local Government. The most fascinating feature to be identified in the implementation of the Local Government Service Commission was the intention of the Central Government to centralize the local authority affairs. This is reflected by the statement made by the Minister of Local Administration, Mr. S.W.R.D. Bandaranaike, in 1945, introducing the Local Government Service for the first time to the island:

"In the first place, the centralisation of the classes of officers available to various local authorities is in itself a desirable step."⁶⁵

It could be said that the introduction of the Local Government Service was to unify the appointments, transfers, promotions and dismissals of local authority employees. However, it is clear that there were allegations against the Commission. For instance, on one occasion a Member of the Parliament stated:

"Governments have come and gone, but the Local Government Service Commission has always

64. Hansard, 9th June 1969, p. 2139

65. Hansard, 23rd January 1945, p. 405.

remained as a rotten a body as one can imagine. . . . There was a time when a pensioner had to retain a member of the Commission in order to get his pension, and when I say "retain", I use the word with all its implications that occur at the bar,"⁶⁶

Moreover, according to Tressie Leitan:

"It was stated by one Town Council Chairman, that over seventy five percent of his staff came under the control of the Local Government Service Commission, he would at most issue a set of working rules to them, but could not take disciplinary action against them nor transfer them. Neither could his council employ any new staff which it considered necessary without central approval. A formal application (which had to be made to the Assistant Commissioner of Local Government) would normally result in a visit from an investigating officer (attached to the Assistant Commissioner of Local Government's district office) who he said "would come more like Criminal Investigation Department officer, sit in the office and get information about the staff. . . ." ⁶⁷

However, it is clear that the Government was positive that there will be no opposition from either the local authorities or the general public in centralising the appointments, transfers etc. of the local government employees. For example, the Choksy Commission, which reported in 1955, pointed out:

"In Ceylon the tendency had been for the Central Government to delegate more and more functions to local authorities and the resumption in the interests of the community and local administration by a centrally created body of certain powers till then vested in local authorities would not . . . evoke much protest or opposition." ⁶⁸

The reaction as predicted more or less, was an agreeable welcome. Only the Colombo and Galle Municipal Councils were against the incorporation of the Local Government Service Commission and this enabled the Government to carry out their proposals with much enthusiasm. This reaction would

66. Hansard, 9. 6. 1969, pp. 2153-2154

67. T. Leitan, *op. cit.*, p. 109

68. S.P. No. 33 of 1955, p. 77.

have been one reason for the Government to introduce the Local Government Service Act No. 18 of 1969, in place of the Local Government Service Act of 1945, and later the Local Government Service Law No. 16 of 1974, with some remarkable changes in relation to the powers of the Minister, repealing the 1969 Act. Under the Local Government Service Law of 1974, the Local Government Service Commission was abolished and instead a Local Government Service Advisory Board and a Local Government Service Disciplinary Board was constituted.

ii. Local Government Service Advisory and Disciplinary Boards

Local Government Service Advisory and Disciplinary Boards were constituted, each with three members appointed by the Minister of whom one was to be designated as the Chairman. For the appointment either as the Chairman or as members, it was essential that they were not members of the Parliament, of a local authority or of the Local Government Service.⁶⁹ Moreover, a member of the Advisory Board was not eligible to function as a member of the Disciplinary Board and vice versa.⁷⁰

With regard to the powers of the Disciplinary Board, the Local Government Service Law provided:

"The Disciplinary Board shall for the purpose of performing its functions under this Law, have all the powers of a District Court-

- a). to summon and to compel the attendance of witnesses;
- b). to compel the production of documents; and

69. Local Government Service Law No. 16 of 1974, section 3(2) and 4(2)

70. ibid.

c).to administer any oath or affirmation on any witness."⁷¹

The most interesting feature to be noted in this new introduction was the Minister's authority over the Local Government Service Advisory and Disciplinary Board. Firstly, the Minister was responsible for, and had the powers of appointment, transfer, dismissal and disciplinary control of, members of the service. Moreover, the Minister was empowered to remove the Chairman or any other member from the Advisory or Disciplinary Boards without assigning any reason. According to the Ordinance:

"such removal shall be final and conclusive and shall not be questioned in any court."⁷²

Accordingly, it could be argued that the Minister has the sole authority over the local authority employees throughout the island.

2. Local Loans and Development Fund

It is an obvious fact that the financial position is vitally important to a local authority. As will be discussed in greater detail in Chapter Eight, according to the Sri Lankan experience it is apparent⁷³ that the local government institutions are mainly dependent on the Central Government for their finance. Although there are provisions for deriving independent revenue through taxes and licence duties, local authority independent income has always been insufficient for them to carry out even their day-to-day affairs. Owing to this reason, the local Councils depend mostly

71. *ibid.*, section 5

72. *ibid.*, section 3(10) and 4(10)

73. *Infra*, Chapter Eight.

on Government grants and also on loans. With regard to the loans, the Local Loans and Development Fund plays a major role, as the loans are made by this Fund to local authorities for different schemes undertaken by them. The Local Loans and Development Fund was established under the Local Loans and Development Ordinance, No. 9 of 1974. Under this Ordinance, the Board of Local Loans and Development Commission was introduced, which consisted of five members all appointed by the Minister.⁷⁴ The local authorities must apply through the Commissioner of Local Government, and in most of the cases the Minister's sanction has to be obtained. A question arises at this point as to whether the Central Government is endowed with overwhelming authority with regard to the financial aspects of local authorities. Our main concern at this juncture is regarding the governmental authority over the Local Loans and Development Fund, as we will be discussing in greater detail the financial implications with regard to central-local relations in Chapter Eight.

It is apparent that the loans under the Local Loans and Development Fund are obtained at the discretion of the Minister, as the Minister's sanction is essential for an approval for a loan. However, although this appears to be a provision where the authority to control the local Councils is granted to the Central Government, at the same time it could be argued that this power is not overwhelming. This fact could be demonstrated through an analysis of the

74. Local Loans and Development Law, No. 9 of 1974, section 3.

requirements for a loan to be obtained from the Government by an English local authority.

According to^{the} Local Government Act 1972, a general power has been conferred on all local authorities to raise loans for a number of purposes subject, however, in any case to the consent of the sanctioning authority being obtained. The sanctioning authority in most circumstances is the Secretary of State for the Environment. Moreover, in England, before the consent can be obtained, the local authority will have to explain their proposals in considerable detail to the Government department concerned and the officers of that department will investigate the matter thoroughly. Hence, although there is no such authority as the Local Loans and Development Fund in England, it is apparent that an English authority needs not only the ministerial sanction but also the approval of the respective department to obtain a loan. Discussing this aspect, Garner points out:

"If the local authority's proposals involve development of any kind, the central officers will need to be assured that other interests (such as public utility undertakings, water authorities, high-way authorities etc.) have been consulted and that, where necessary, a planning permission has been obtained for the project. The officials of the department will investigate the financial aspects of the application, ensuring that the resources available to the local authority are adequate, they will satisfy themselves as to engineering and other technical procedures; after making suggestions on matters of technique or expertise and they may also be concerned to ensure that general departmental policy is being followed."⁷⁵

Furthermore, it seems that the departmental policies are of a more detailed kind. For instance, in the

⁷⁵J.F.Garner, Administrative Law, London, Butterworths, 1979, p.453.

1970's, as a matter of policy, every house created under the Housing Act in respect of which a loan sanction was requested, was to be provided with an outside w.c. in addition to that provided within the dwelling.⁷⁶

Comparatively, it could be said that such requirements are not essential in Sri Lanka for a local authority to obtain a loan from the Central Government. On these grounds it could be argued that although the local authorities are under the authority of the Government, with regard to loan sanctions, that the power of the Central Government in this connection is not overwhelming. This reveals that the powers which belong to the Central Government in relation to local government institutions cannot be generalised as authoritative. However, before we come to a conclusion on this point it is essential to analyse a third factor with regard to the powers of the Central Government.

As discussed above, it is clear that the local authorities are established for the purpose of carrying out essential duties of a country. It has been said that local government is multi-purpose: every local authority has many jobs to do and a variety of services to provide.⁷⁷ Thus, in England, local authorities are entrusted with functions in connection/ ^{with} subjects such as, Highways, Public Order, Sanitation and Public Hygiene, Town and Country Planning, Administration of Justice, Utility Services and personal services such as Education. On the other hand with regard to Sri Lanka, it is interesting as well as important to note that

76. ibid., p.453, foot note 20

77. Tony Byrne, op.cit., p.18.

most of the important services are centralised. Thus, it is essential to analyse the extent of this centralisation, for the purpose of identifying the authority of the Central Government over local Councils.

III.A comparative analysis regarding the extent of centralisation

"The centralising tendency" says Robson, "which is undermining local government, assumes several forms. One form is the straightforward transfer of functions from local authorities to Government Departments or similar organs. This has occurred ⁱⁿ / regard to civil airfields, trunk roads, hospitals, public assistance and the valuation of property for rating. A second form consists of the transfer of services and undertakings to ad hoc bodies subject to varying degrees of central control. This has happened in the case of the licensing of passenger road services, gas and electricity supply and other public utility services. Yet another form consists of increased central control over local authorities. There are many manifestations of this."⁷⁸

Discussing the same point, however, in regard to central-local relationship, Rhodes points out that the centralisation has made the relationship between the Central Government and local authorities to move from the partnership model to that of the agency model.⁷⁹ According to Rhodes:

"[In] the nature of the relationship . . . a distinction is normally drawn between the agent and partnership models of central-local relations. In the agent model, local authorities implement national policies under the supervision of central departments. Local authorities have little or no

78. W.A. Robson, The developments of local government, London, George Allen and Unwin, 1954, p. 36

79. R.A.W. Rhodes, op.cit., p. 75.

discretion. In the partnership model local authorities and central departments are co-equals under Parliament and local authorities have considerable discretion to design and implement their own policies. Employing these two models it is agreed that local government is moving from the situation described in the partnership model to that of the agent model."⁸⁰

This emphasises the fact that, during recent times, there has been a tendency for centralisation, rather than ^{of} devolution/authority to local government institutions. Thus, it is essential to examine the extent of the centralisation in England and in Sri Lanka. Accordingly, the systems of education in England and in Sri Lanka will be analysed to examine and assess the tendency for centralisation, as the systems of education on the one hand are vitally important to any nation and on the other hand they signify some interesting points in this context.

1. The English educational administrative structure

An interesting point to identify in the English educational administrative structure is that it is carried out by two different structures of administration. A detailed analysis of the subject demonstrates the fact that the educational administration is carried out at the "national level" as well as at the "local level". On the other hand it is also identified that the ultimate control of this administration is in the hands of the Secretary of State for the Education. Hence it is important to examine in detail the structural framework of educational administration in England.

⁸⁰. ibid.

Since the enactment of the Education Act, 1944, the structure of education which is known as the "State system"⁸¹ is carried out by the central and the local system of administration. Discussing the common term of "State system", Keith Davies points out:

"This expression reflects the fact that as with other public administrative functions, the work of the local authorities is subject to national control by the Central Government."⁸²

Since the introduction of the 1964 Education Act, the central authority for education has been the Department of Education and Science, under the Secretary of State for Education and Science in accordance with the Secretary of State for Education and Science Order 1964.⁸³ On the other hand, in addition to the central education authority, there are local education authorities in England. The local education authorities which function today are those which were introduced, subject to a power of the Secretary of State to set up joint education bodies, under the 1944 Education Act, as amended by the London Government Act of 1963 and also by the Local Government Act 1972.⁸⁴ Generally, the Councils of non-metropolitan counties and metropolitan districts are local education authorities.⁸⁵ However, the Secretary of State has the power by Order to create a joint education board for the area of two or more authorities if he considers that there is an advantage.⁸⁶ This clarifies the fact that ^{the} English educational system ^{is} comprised of two different structures of administration, and it is important

81. Keith Davies, Local government law, Butterworths, 1983, p. 312

82. ibid., pp. 312-313

83. Education Act 1964, section 1

84. Education Act 1972, section 192

85. ibid., Education Act 1944, section 6 and the first schedule

86. ibid.

to analyse the working of this system and the powers of the central and local government.

As the Table iv points out, the Secretary of State is the head of the Department of Education and Science and he exercises his power through a number of Deputy Secretaries and Under Secretaries attached to the Department. The most important point with regard to the head of the Department of Education and Science is his powers which are laid in the Education Act 1944. Section 1 of the Education Act 1944, imposes on the Secretary of State the duty:

"to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose and to secure the effective execution by local authorities under his control and direction of the national policy for providing a varied and comprehensive educational service in every area."⁸⁷

This suggests that the powers of the Secretary of State to direct and control the work of local education authorities are extensive.⁸⁸ "In several cases" said Cross, "his approval is needed before an authority can give effect to its decisions and in others he may issue declarations with which the authority must comply."⁸⁹ Moreover, under his general powers:

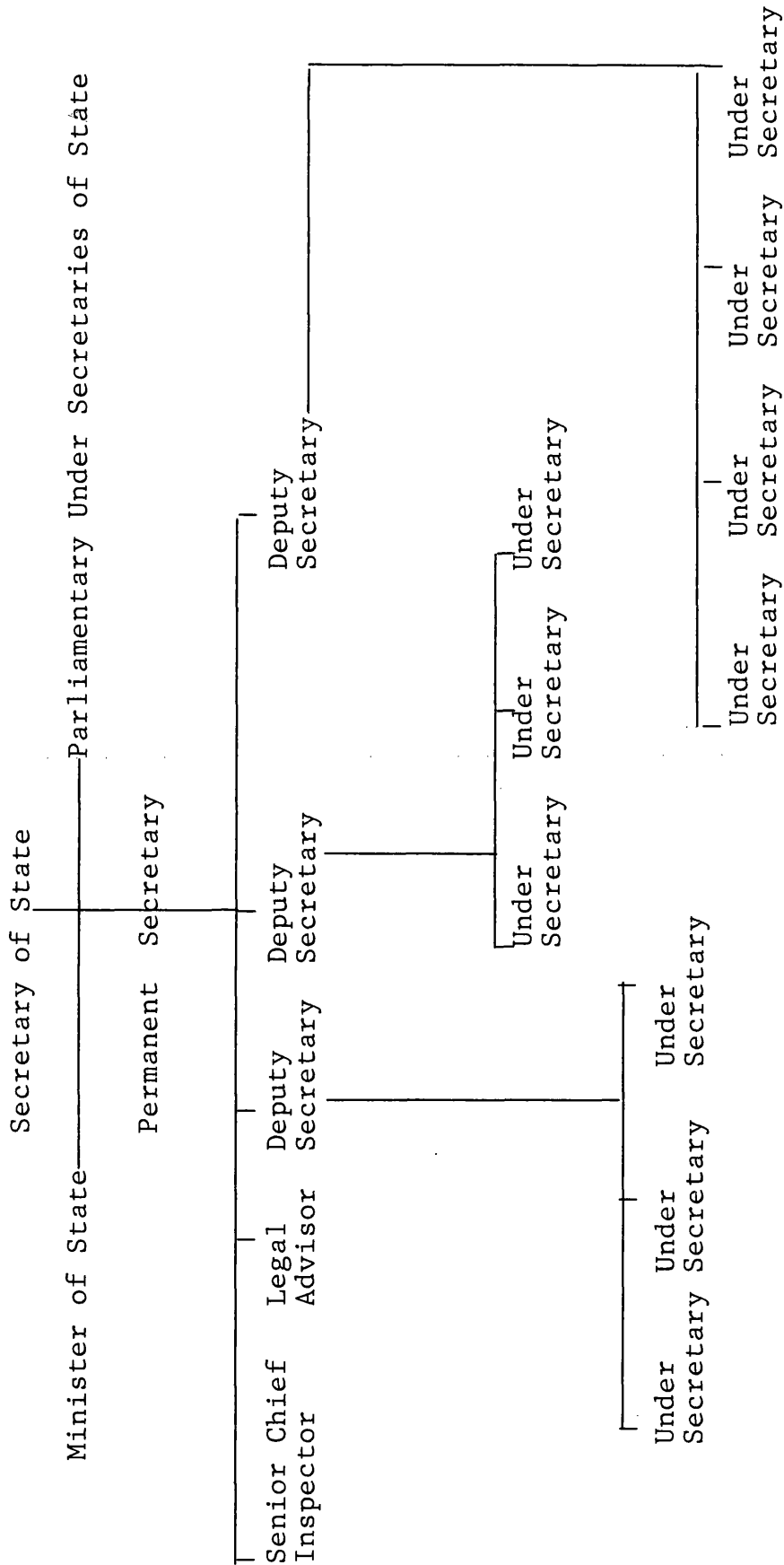
"If the Secretary of State is satisfied either on complaint by any person or otherwise that any local education authority . . . have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act he may not notwithstanding any enactment rendering the exercise of the power or the performance of the

87. Education Act 1944, section 1

88. C.A. Cross, Principles of Local Government Law, Sixth Edition, Sweet and Maxwell, p. 426

89. ibid., pp. 426-427.

Department of Education and Science



the
 Diagram VIII- The structure of /Department of Education and Science in England

Source: Keith Davies, Local Government Law, op.cit., p.65.

duty contingent upon the opinion of the authority . . . give such directions as to the exercise of the power of the duty as appear to him to be expedient."⁹⁰

Thus, it is clear that the Secretary of State is the supreme authority in education and even the local education authorities are under his supervision. The extent of the Secretary's powers under section 68 was discussed by the House / ^{of} Lords in Secretary of State for Education and Science v Metropolitan Borough of Tameside⁹¹. It could be said that this case is a land-mark, especially with regard to central-local relations. Moreover, as will be apparent, it could be argued that the judgement by the House of Lords clearly narrowed down the powers of the Secretary of State in relation to local education authorities. In this case the council for the Metropolitan Borough of Tameside proposed to bring all the schools in its area under the "comprehensive" system of non-selective secondary education. This scheme was approved by the Secretary of State in 1975 and implementation of the scheme was envisaged from the beginning of the school year in September 1976. Meanwhile, in May 1976, the local government elections were held and the newly elected Council, of a different political complexion, submitted to the Secretary of State in June 1976 its proposals for maintaining a form of pupil selection in secondary education. In June 1976 the Secretary of State, under section 68 of the Education Act 1944, directed the authority to give effect to the proposals approved by the Secretary in 1975 and to implement the arrangements previously made for allocation of pupils to

90. Education Act 1944, section 68

91. [1977] A.C. 1014.

secondary schools for the coming year on a non-selective basis. Section 68 states, in essence, that if the Secretary of State is satisfied that any local education authority is acting unreasonably in relation to any power conferred on it, the Secretary of State may give directions as to the exercise of that power. The argument of the Secretary of State in this case was that he considered that a reversion to a principle of selection would at this late stage be harmful and that he considered the councils proposed action to be an unreasonable one within the meaning of section 68. Accordingly, he issued a direction to the council ordering it to implement the comprehensive scheme and subsequently he obtained an order of Mandamus. The Divisional Court held that the Secretary of State was justified in saying that in the circumstances there was no time to carry out the proposed selection procedure by September and that accordingly he was fully entitled to the opinion that the authority's proposal was unreasonable. The Court of Appeal, after receiving evidence to the effect that the selection procedure proposed by the authority was well-known, tried and workable, and that sufficient teachers were available to form a selection panel, allowed the authority's appeal and quashed the order of Mandamus. On appeal by the Secretary of State, the House of Lords dismissed the appeal, holding that under the Act of 1944 a local education authority was entitled to have a policy and section 68 did not entitle the Secretary of State to require them to abandon it because he disagreed with it.

This judgement could be analysed from the point of view of central-local relations. It is clear that

section 68 of the Education Act 1944, was interpreted narrowly by the House of Lords. The two important questions, whether the Secretary of State had reasonable grounds to believe that the local authority's action was unreasonable? and what is meant by the term unreasonable? were analysed by the House of Lords in their natural meaning and in an impartial manner and for these reasons the decision of the House of Lords could be justified.

Moreover, in his judgement Lord Wilberforce quite clearly pointed out that the local education authorities are responsible for providing secondary education.

"Education is still governed by this notable statute (Education Act, 1944) Under the Act responsibility for secondary education rests upon a fourfold foundation; the Minister (as he was then called); local authorities; parental wishes; and managers and governors. All have their part to play. The primary responsibility rests on the Minister. He has to promote the education But, local education authorities which are elected, have their place defined. It is they who are responsible for providing secondary education in schools."⁹²

However, it is worthy to note that in England the ultimate control with regard to local education authorities is with the Secretary of State. For example, Lord Wilberforce, in Tameside Metropolitan Borough Council, mentioned:

"Section 13 is an important section; it is that which was acted on in 1975. It enables local

⁹². ibid., at p. 1046.

education authorities to make significant changes in the character of any school but requiring them to make proposals to that effect to the Secretary of State. So the initiative is theirs; ultimate control is with the Secretary of State."⁹³

Accordingly, it could be argued that under the English educational administrative structure the ultimate control is with the Secretary of State. This fact is confirmed when one refers to section 99 of the Education Act 1944.

"If (the Secretary of State) is satisfied . . . that any local authority . . . have failed to discharge any duty imposed upon them by or for the purpose of this Act (the Secretary of State) may make an order declaring the authority . . . to be in default in respect of that duty and giving such directions for the purpose of enforcing the execution thereof as appear to (the Secretary of State) to be expedient; and any such direction shall be enforceable on an application made on behalf of (the Secretary of State) by mandamus."

On the other hand, with reference to the constitution of local education authorities, it could be argued that the education committees are to a certain extent autonomous bodies, uninfluenced by the Central Government. For instance, the education committee of a local education authority includes persons of experience in education and personally acquainted with the educational conditions prevailing in the area,⁹⁴ and they have the power to purchase compulsorily any land situated within the area of the authority which is required for the purpose of any school or college which is maintained by them.⁹⁵

However, on the other hand, it is clear that

93. ibid.

94. Education Act 1944, section 5

95. ibid., section 90.

the Secretary of State has the power to intervene with the affairs of local education committees. For example, local education committees are established in accordance with arrangements approved by the Secretary of State.⁹⁶ Also, when the local education committee purchase lands for the purpose of schools maintained by them, the due authorisation should be granted by the Secretary of State in the first instance.⁹⁷

This again emphasises the fact that the ultimate control of local education authorities is in the hands of the Central Government. However, it is significant to note that in English educational administrative structure, there has always been a local system of administration which gave power to County Councils. For example, under the Education Act 1902, the County Councils and County Borough Councils were local education authorities.⁹⁸ In addition to these, Urban District Councils which had a population exceeding 20,000 at the 1901 census and Municipal Boroughs with a population exceeding 10,000 at the same time were made local education authorities under the 1902 Act, though only for elementary education.⁹⁹ In this sense it is obvious that in England the subject of education, which is of primary importance to any country, has been entrusted to the local authorities at the local level, but retaining the ultimate control by the Central Government. However, before we come to a final conclusion regarding the status of local Councils and the

96. *ibid.*, schedule 1, part ii, section 1

97. *ibid.*, section 90(1)

98. Education Act 1902

99. *ibid.*

extent of the centralisation, it is necessary to analyse the situation in this context in Sri Lanka.

2. The Sri Lankan educational administrative structure

A remarkable contrast with the English system is seen in the Sri Lankan educational administrative structure whereby the education in the country is wholly carried out by the Central Government through the regional Government departments: indeed the local government institutions have no direct involvement in this context. This reveals that unlike in England in Sri Lanka the system of education, which is one of the most important services to any country, is wholly carried out by the Central Government and the local government institutions have no involvement with it. Consequently, it is important to examine the structure of the educational administration for the purpose of analysing the extent of centralisation.

With regard to the structure of the educational administration in Sri Lanka, it could be said that three different systems of administration have prevailed from the period of early 18th century to the present day. For instance, education was carried out under the Central School Commission from 1841 to 1870 and under the Department of Public Instruction from 1870 to 1939. In 1939 the administration was again re-organised under the Education Ordinance, No. 31 of 1939. Since then there have

been a number of amendments to this Ordinance from time to time. However, a continuing feature to be identified in all three types of administration was the authority of the Central Government in the administration of education. Hence, it is essential to examine these different systems of educational administration to identify the extent of centralisation in Sri Lanka.

i. The system of education under the Central School Commission

The Central School Commission was constituted in May 1834 under the direction of Governor Mackenzie. An interesting point to be noted in this Commission was the authority attributed to the Government to carry out the essential functions. A few reasons could be mentioned in this context. Firstly, it was the duty of the Commission to carry out the general education of the whole population in the country. Secondly, for this purpose, the Commission was empowered to undertake the administration of the funds voted by the Legislative Council for the purpose of education, the appointment of all school masters, the fixing of their salaries, the purchase of school books, furniture and so on.¹ The most important factor of the Commission was its composition, which included the Colonial Secretary as its President. However, it is worthy to note that in Governor Mackenzie's minutes, setting up the new Commission, there is no mention with regard to the President. The minute reads as follows:

¹ J. E. Jayasooriya, Education policies and progress during the British rule in Ceylon (1796-1948), Associated Educational Publishers, 1976, p. 125.

"The new Commission shall be denominated "the Central School Commission, for the instruction of the population of Ceylon", and shall consist of not exceeding nine members, three of whom, when practicable shall be a clergyman of the Church of England, a Presbyterian minister and a Roman Catholic priest or layman. To this Commission will be attached a paid officer who shall act as Secretary to the Commission, and Inspector of Schools under their orders."²

However, according to the early records, it is clear that the first President of this Commission was the Colonial Secretary appointed by the Governor.³ Again after 1846, Emerson Tennent, the Colonial Secretary, was made the President and during this time the then Governor had announced that thereafter the Colonial Secretary or the Acting Colonial Secretary would be the President.⁴ Moreover, in 1855, the Government vested all administrative powers in the President of the Central School Commission.⁵ This emphasises the fact that during this period there was no authority for the local councils to intervene with the educational administration and that the administration was vested in a Commission comprised of governmental officers.

However, in 1865 the Legislative Council decided:

"a committee be appointed to inquire and report upon the state and prospects of education in the island, the amount of success which has attended the working of the present system of education and any improvement that may be deemed advisable to make thereon."⁶

For this purpose, a sub-committee was appointed under the Chairmanship of Richard Morgan, the Queen's Advocate.⁷

2. Governor Mackenzie's minute of 27th March 1841, Ceylon Almanac, 1844, p.130

3. ibid.

4. J.E. Jayasooriya, op.cit., p.125

5. Central School Commission Report, 1855, J.R.A.S.C.B., 1931, Volume xxxii, p.49

6. S.P.No.8 of 1867, p.5

7. ibid.

The most important outcome of the "Morgan Committee" recommendations was the introduction of the Department of Public Instruction, in place of the Central School Commission.

ii. The system of education under the Department of Public Instruction

In 1870, the Department of Public Instruction took over the responsibilities of administration of education in the country. Under this scheme a Director of Public Instruction was appointed and towards the end of 1896 the Governor established a Board of Education, consisting of the Bishop of Colombo, a Wesleyan missionary, a Roman Catholic Missionary, a representative of the Buddhist Theosophical Society, the Inspector of Schools of the Western Province, the Principal of the Royal College (the premier Government school in the island) and the Principal of the Ceylon Technical College.⁸ However, the Board of Education was only advisory and this was clearly mentioned in the report of the Director of Public Instruction:

"The Board is essentially advisory. The interests of all missions and educational agencies are represented in it. Its duties are primarily to confer with the Director of Public Instruction upon all questions affecting schools other than Government schools, and generally to assist the Director in the multifarious details which must necessarily from time to time occur when so many conflicts of interests of agencies and managers are involved."

It is clear that the administration carried out under the Director of Public Instruction did not differ from the type of the administration under the Central School

8. J. E. Jayasooriya, op.cit., p. 246

9. Administrative Report of the Director of Public Instruction, 1897.

Commission. However, the most noteworthy feature during this period under review was the Government's interest in granting the responsibility of the administration of education, to local government institutions, for the first time in the history. Thus, discussing this point, Professor J.E. Jayasooriya, mentioned:

"As at the beginning of the period under review (1869-1900), the local government bodies, functioning in the country consisted of municipalities in the cities of Colombo, Kandy and Galle, Local Boards in town areas and Village Councils. None of them shared any responsibility for education, as the provision and administration of education were in the hands of the Government, missionary societies and private individuals."¹⁰

Further he points out:

"In India action was taken in the 1860's to make some of the provinces bear part of the expenditure for education. In England School Boards were created by the Elementary Education Act of 1870 to take responsibility for education. These developments naturally attracted the attention of Colonial administrations in Ceylon, and the Director of Public Instruction made a proposal to the Government."¹¹

Accordingly, local government institutions were empowered with duties in relation to educational administration. However, it is also interesting to note that the attempt was a failure. This was due to various reasons which are worthy to note as this reveals the attitude of the Central Government with regard to decentralisation.

Firstly, it should be noted that the new powers were given only to Village Councils, the lowest and weakest institutions in the local authority structure. The Municipal Councils and Local Boards were not entrusted with

¹⁰ J.E. Jayasooriya, op.cit., p. 277

¹¹ ibid.

any of the powers. Secondly, it is clear that these powers were limited only "for constructing and repairing school rooms, for education of boys and girls and for securing their attendance at school".¹² Moreover, it could be said that the extent to which the Village Councils made use of their new powers depended largely on the initiative of the people in each Village Council area and their interest in education. For instance, if a Village Council which did not have a school did erect a school room or a set of school rooms, the responsibility devolved upon the Government to provide teachers.¹³ This fact itself demonstrates that only limited powers were attributed to the Village Councils under this scheme. Moreover, one of the episodes which took place during the 1880s is worthy to note as this demonstrates the attitude of the Central Government towards local authorities.

It could be said that in ^{the} 1880s the Government took a keen interest in entrusting more powers with regard to education, not only to Village Councils, but also to Municipal and Local Boards. However, an interesting feature to be noted in this respect was, on the one hand, the enthusiasm of the Government administrators to transfer some of the important powers to the local councils and, on the other hand, the strong opposition of the representatives of the people to this decision. The most interesting outcome of these incidents was the failure of local authorities in carrying out functions with regard to education. Nonetheless, it should be mentioned that this failure was primarily ^{due} / to the decision of the Government

12. Village Councils Ordinance, No. 26 of 1871

13. J.E. Jayasooriya, op.cit., pp. 277-278.

which is important to note.

It must be noted that during this period, the Government was faced with a crisis resulting from the fall of the revenue from the coffee plantations which were attacked by disease. Owing to this reason, the Government was forced to economise in its expenditures and, as pointed out by the Director of Public Instruction, one of the methods was "by gradually withdrawing from the management of English Schools".¹⁴ For this reason, a Retrenchment Committee was appointed by the Government and it was of the opinion that some of the schools were to be handed over to Municipal and Local Boards. The Retrenchment Committee's decision was mostly based on the evidence given by the Director of Public Instruction. He had stated before the Retrenchment Committee:

"As regards the expenditure of my Department, I have received instructions that the maximum limit is to be half a million rupees; I am preparing a scheme for the relief of the general revenue of a portion of the expenditure of Government schools. It is a very moderate measure, intended at first to apply only to Government English schools in municipalities and Local Board towns. Its object is to leave to municipalities and Local Boards the option of maintaining such schools. If the schools are to be maintained, the difference between the actual cost of the school and amount earned by the school for results at grant-in-aid rates will have to be defrayed by the local community. The local bodies may either assume or leave the management to the Department of Public Instruction. My object in proposing to relieve the general revenue of a portion of the present expenditure on English schools, is to set free a further sum for the extension of vernacular education."¹⁵

Following these guidelines, the Retrenchment Committee presented three recommendations in relation to education. First, was that the expenditure of the island with

14. Administrative Report of the Director of Public Instruction, 1881

15. Hansard, 11th February, 1884, p. 51.

regard to education should be reduced to Rs. 300,000 per year. The second was that the Government vernacular schools were to be handed over to Municipal Councils and Local Boards. The third was that the Government English schools within the Municipal Councils and the Local Boards should be handed over to Municipal Councils and Local Boards with the option of continuing or discontinuing.

This implies that the intention of the Government was to overburden the local authorities with these new responsibilities, rather than gradually to empower the local councils with essential powers. However, in 1883 these proposals were presented to the Legislative Council.¹⁶ There was strong opposition to these proposals from P. Ramanathan, the Tamil member in the Legislative Council, who stated:

"it is undesirable to transfer to municipalities and Local Boards, the maintenance and management of the Government schools."¹⁷

However, a vote was taken on Ramanathan's motion and it was defeated. Nevertheless, it could be argued at this point that the opposition of Ramanathan to transfer the powers to Municipal Councils and Local Boards was justified, as there was no possibility for these councils to take over the heavy burden of funding the system of education. As will be apparent later,¹⁸ the local authorities were always faced with the problem of inadequate finances and for this reason it was unreasonable to entrust such a heavy burden to the local authorities.

16. Hansard, 21st December 1883, p. 21

17. Hansard, 11th February 1884, p. 51

18. Infra, Chapter Eight.

However, notwithstanding the protests made by several eminent authorities,¹⁹ the Government introduced an Ordinance, "to enable the Government to transfer to municipalities and Local Boards the providing for English education within their limits." Although the necessary legislation was made available, no Municipal Council or Local Board was able to take over the schools. The Puttalam Local Board's effort proved to be a short-lived one and schools were either closed down by the Government or handed over to the missionaries. Discussing this, Professor J.E. Jayasooriya stated:

"the move to transfer responsibility over English education in the municipalities and Local Boards to these local government bodies proved to be a fiasco."²⁰

Thus, the first attempt to entrust the administration of education to local government institutions was unsuccessful and it could be argued that this was one reason why the Government did not attempt to decentralise the administration of education. The new administrative structure introduced in 1939 reveals that the Central Government had taken notice of this early failure.

iii. The system of education under the 1939 Ordinance

As pointed out earlier, prior to 1939 the administration of education was vested in the Director of Public Instruction and the Board of Education. In 1912, the designation of the Director of Public Instruction

19. Rt. Rev. Bishop Bonjean opposed to this Bill

20. J.E. Jayasooriya, op.cit., p.283.

was changed to Director of Education and the Department of Public Instruction became the Department of Education. However, the Department of Education was re-organised only after the Donoughmore Constitution and it is essential to analyse the Education Ordinance, No. 31 of 1939, to examine the structural changes and the extent of centralisation.

A significant feature in the 1939 Ordinance was the introduction of a centralised authority for the administration of education. The Department of Education, which was functioning well before 1939, was re-established under the 1939 Ordinance and a Director of Education was appointed as the chief authority.²¹ According to the reforms made in response to the Donoughmore recommendations, the Department of Education came under the Ministry of Education and the Minister in charge of this Ministry with his Permanent Secretary comprised the central authority.

Moreover, the decision of the Minister of Education in every instance was final and conclusive.²² To assist the Director, a Board of Education was established, consisting of the Director and a prescribed number of members appointed by the Governor,²³ to give advice to the

21. Education Ordinance, No. 31 of 1939, section 2(1)

22. *ibid.*, section 2(1)

23. *ibid.*, section 5

Director on any matters relating to education in the island.²⁴
The Board was also authorised to make recommendations to the Director of Education on matters not necessarily of those referred to the Board by the Director.²⁵

In addition to the Board of Education provision was made to establish Local Advisory Committees for the purpose of advising the Director upon matters connected with education in the "different parts of the island."²⁶ These advisory Committees were a noteworthy feature under the Education Ordinance as they too were branches of the bureaucracy. Out of the twelve members ten were directly appointed by the Governor²⁷ and the remaining two were nominees of the Municipal or District Councils. Moreover, the local Committees, like the Board of Education, were advisory only to the Department of Education; they were given no executive or administrative powers or functions other than giving advice or making recommendations on educational matters.²⁸

Other than the establishment of these Local Advisory Committees in the provinces, no provision was made to decentralise the administration of education. Thus, the sole authority of administration was vested with the Minister of Education and was frozen at the headquarters in Colombo. Thus, it was clear that during the early 20th century, the educational administration was a highly centralised service.

24. ibid., section 6(1)

25. ibid.

26. ibid., section 9(2)

27. ibid., section 10(4)

28. ibid., section 12(1)

However, in 1950 an attempt was made to decentralise the structure of educational administration. Under the Soulbury Constitution in 1947 provision was made to appoint a Permanent Secretary for each Ministry.²⁹ Since 1947 there have been various amendments to the Education Act. For example, under the Education (Amendment) Act, No. 5 of 1951, Parliament abolished the Board of Education and created in its place the Central Advisory Councils, consisting of persons not less than ten in number and appointed by the Minister.³⁰ Henceforth, the educational administrative structure has been revised and in 1973, the Education (Change of Designation) Law No. 35 of 1973, introduced the designation of Director-General of Education to the ministry.³¹

"The Director of Education shall be known and cited for all purposes by the designation "Director-General of Education" and accordingly-

1. The Director-General of Education shall exercise, discharge or perform any power, function or duty vested in or assigned to or imposed on the Director of Education by the Education Ordinance, the Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960, the Assisted Schools and Training Colleges (Supplementary Provisions) Act, No. 8 of 1961 or by any other written law."³²

Accordingly, the former Director of Education, who was designated as the head of the central authority, became the Director-General of Education. Before the establishment of Education Departments in each of the ^{revenue} districts, there was only one Education Department ^{for the} whole island, as stated

29. The Ceylon (Constitution) Order in Council, 1946

30. Education (Amendment) Act No. 5 of 1951

31. Education (Change of Designation) Law No. 35 of 1973

32. ibid., section 2(1).

above. After the re-organisation, the Regional Director of Education became the head of the Regional Department and took over the functions as the representative of the Secretary to the Ministry of Education. At present he is the chief executive of the district who implements all the educational policy matters sent down to the district from the Ministry of Education. He represents the Ministry in the district co-ordinating meetings held in the Secretariat.³³

As the table vi and vii, illustrates, at present the entire system of educational administration is decentralised, however, without entrusting any power to the local government institutions. However, under the Development Councils Act No. 35 of 1980, which will be discussed in greater detail in Chapter Nine, there is provision for the Development Councils to be involved with the subject of Education. According to section 35 of the Development Councils Act:

"The Executive Committee of a Development Council shall,

- a). in respect of all or any of the subjects specified in the First Schedule to this Act, consider the draft development proposals prepared in consultation with the appropriate Minister, prepare an annual development plan incorporating all or any such proposals and submit such plan through the Minister to the Development Council for its approval."³⁴

The First Schedule to the Development Councils Act listed fifteen subjects of which one is education. Thus, theoretically, it could be argued that the necessary provision has been made available for the local government institutions to join in the administration of education. However, in practice, it is clear that so far no educational duties are carried out by Development Councils or even by other

33. Personal interview with the Regional Director of Education, North Central Province, Wilson Bandaranayake Esqr, September 1983

34. Development Councils Act, section 35.

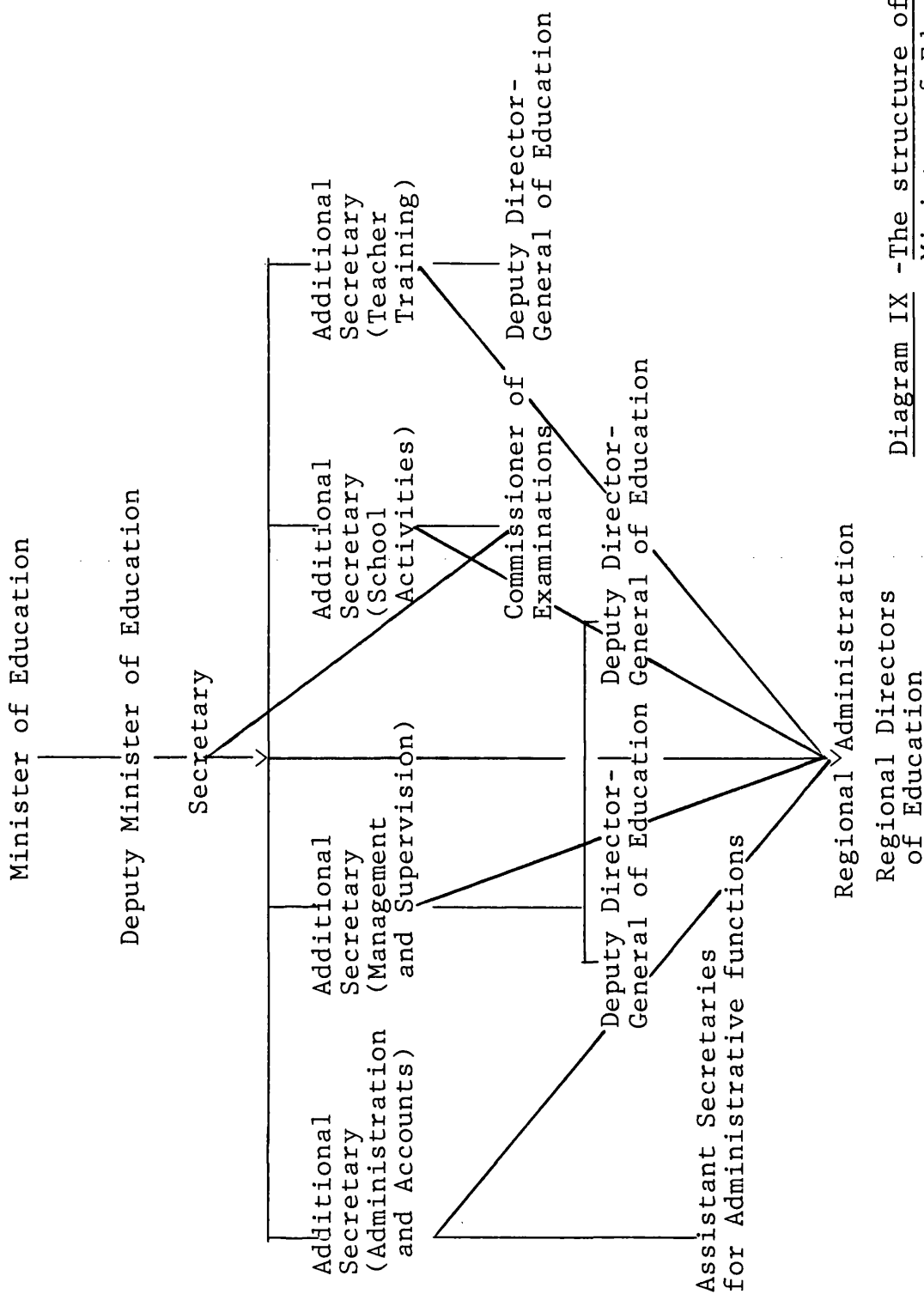


Diagram IX -The structure of the
Ministry of Education

Source: Wilson Bandaranayake Esqr.,
Regional Director of Education

Regional Department of Education

Regional Director of Education

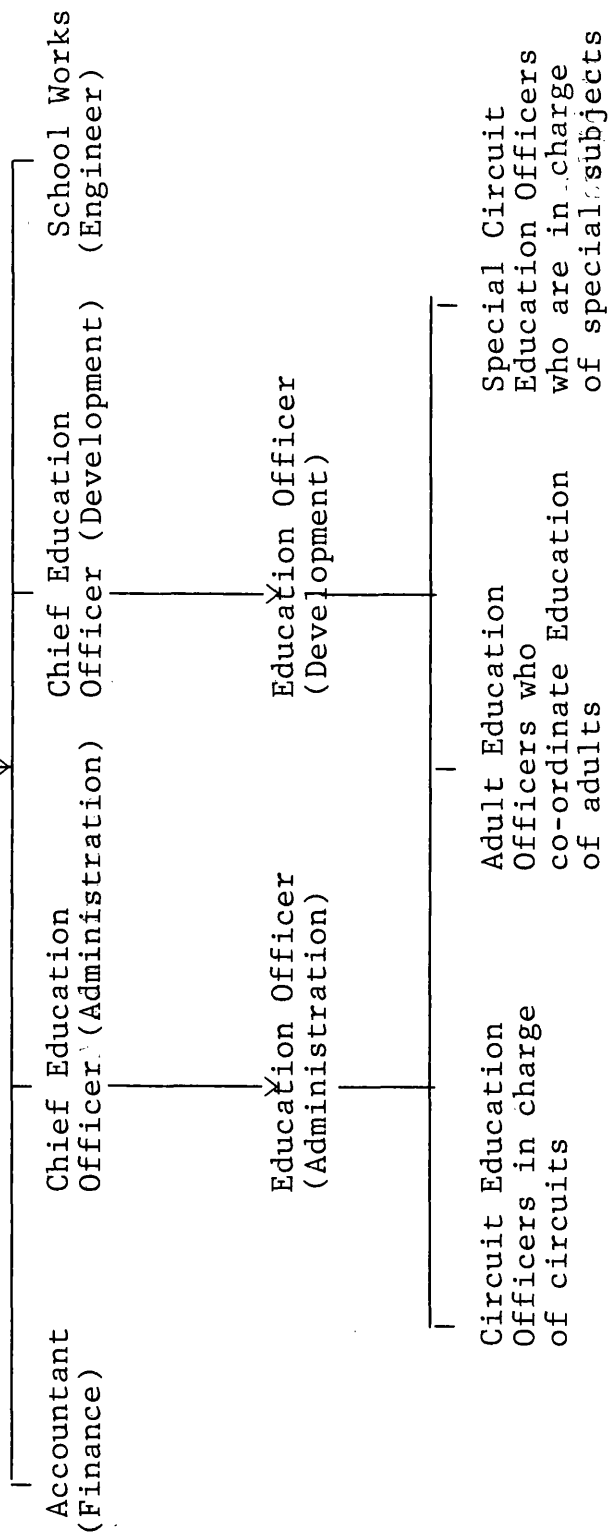


Diagram X- The administrative organisation of a Regional Department of Education

Source: Wilson Bandaranayake Esqr., Regional Director of Education.

local authorities. There are a few facts which are relevant in this respect. For example, the North Central Province, which ^{is} the biggest Educational Region by area in the island,³⁵ includes four hundred and ninety-seven schools.³⁶ At the interview with the Regional Director of Education of this region it was revealed that there are no schools which are maintained and administered by the local authorities in his administrative area, or in any other parts of the island. The Education Department of the North Central Province has no direct involvement with the Urban Council or Development Council as far as educational administration is considered. Moreover, although for residential and commercial buildings, constructed in urban areas, prior approval by the local authorities of building plans is required, such approval is not required for buildings constructed for educational purposes: plans are drawn up and approved by the technical officers of the Education Department. This demonstrates that the local authorities have no involvement with the Department of Education or with educational administration in this province. However, the Director of Education indicated that there were a few rare instances where the Development Council had requested him to intervene in the maladministration of certain schools by their heads and to appoint suitably qualified teachers to schools which were inadequately staffed in certain remote areas.³⁷ Apart from these rare occasions there does not seem to be any direct involvement

35. Personal interview with the Director of Education, North Central Province, Wilson Bandaranayake Esqr., September 1983

36. ibid.

37. ibid.

by the local authorities with educational administration.³⁸
This information clearly emphasises the fact that at present in Sri Lanka education is entirely a centralised service.

Concluding remarks

The above analysis emphasises the fact that, according to the Sri Lankan experience, an authoritative power is vested with the Central Government to control the local authorities. Moreover, it is clear that these controls are carried out through the Minister, the Commissioner and the Assistant Commissioners of Local Government. Accordingly, at present, although local government institutions are more or less elected bodies, they are under the authority of the Central Government. Moreover a comparative analysis of the extent / of centralisation demonstrates that in Sri Lanka the important services such as education are exclusively carried out by the Central Government and local authorities are not empowered to "join in" for the purpose of administering these services. There is no doubt that a service such as education could be administered as a national service, but a centralised service is heavily professionally-orientated which could weaken the democratic control of a country. However, this does not imply that the education service should be totally carried out by the local government institutions. The most important factors in this context is the "effectiveness", "fairness" and the equality of the service and for this purpose it is necessary to have a limited

38. ibid.

amount of control over the local government institutions. Discussing the system of education in England Keith Davies pointed out:

"The duty of the Secretary of State, inherited from the Minister of Education is "to promote the education of the people of England and Wales and the progressive development of institutions devoted to that purpose, and to secure the effective execution by local authorities, under his control and direction, of the national policy for providing a varied and comprehensive educational service . . .", as stated in the 1944 Act. He must report to Parliament annually. This is the foundation for an administrative system of the familiar type: routine detailed execution by the local authorities, subject to Central Government supervision by directions, regulations, circulars, consultations and inspections."³⁹

Nonetheless, it is apparent that the local authorities in England are granted with a substantial degree of autonomy to carry out these educational services. For instance, Tony Byrne has mentioned:

"Freedom is a strong feature of the British education system, for although the Secretary of State is required "to promote the education of the people . . . and secure the effective execution by local authorities, under his control and direction, of the national policy" of education, in practice LEA's are given a substantial degree of autonomy. The British system of education is perhaps the most decentralised in Europe."⁴⁰

In this respect it could be said that the English system of education service is a good example to be introduced in Sri Lanka. However, with regard to the Sri Lankan experience an interesting feature to be identified in relation to the authority of the Central Government as a whole is the excessiveness of the powers attributed to the

39. Keith Davies, op.cit., p. 313

40. Tony Byrne, op.cit., p. 78.

Government to control the local government institutions.Hence, before we come to a final conclusion as to the methods that should be followed in decentralising the administrative structure,it is essential to analyse the forms of controls of the Central Government.To this we turn in the following three Chapters.

PART TWO

LEGAL ASPECTS IN CENTRAL-LOCAL RELATIONS

Chapter Six

The role of the administration in central-local relations

The Royal Commission on local government in England¹ which reported in 1969, discussing the relations between the Central Government and local authorities, stated:

"What is wrong in the relationship at present is partly that Central Government tries itself to do some of the things that belong properly to local government, and partly that local authorities are not given enough freedom to go their own way. In addition, they are subjected to a number of minor controls and requirements which detract from their ability to manage their own affairs and make their own decisions-controls and requirements which cannot we believe, be justified as necessary in the national interest."²

This analysis emphasises the fact that in addition to the judicial and financial controls over local authorities, the Parliament through the administration, could control the activities of the local government institutions. For instance in England, section 68 of the Education Act 1944³ empowers the Secretary of State to give directions:

"if[he] is satisfied . . . that any local education authority . . . have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under this Act"

Although, such statutory interventions are somewhat rare in England as well as in Sri Lanka, according to the Sri Lankan experience, it is apparent that the Minister of Local Government possesses characteristic powers in controlling local authorities. Commensurate with the statutory provisions of Local Government Ordinances, the Minister of Local Government is empowered to approve and confirm by-laws, to grant approval

1. The Redcliffe-Maud Committee, Cmd. 4040

2. *ibid.*

3. Supra, Chapter Five.

and recommendation to local authority decisions with regard to policy matters, to conduct inquiries and investigations in relation to local councils, to dissolve local authorities and to remove Mayors/Chairmen and councillors of such institutions. Accordingly, it could be argued that the local authorities have to depend mostly on the decisions of the Minister as he could not only prevent the local authorities consummate decisions with regard to local government services, but also could limit the life span of councils by dissolving them, even affecting the office of Mayors/Chairmen and councillors. Nevertheless, a question arises at this point as to the capability of the local authorities to safeguard themselves from the autocratic administration in this respect. Consequently, it is significant that it is essential to analyse the role of the Minister in relation to local authority functions via the administration, which appears to be vitally important with regard to central-local relations. Therefore, it is intended to examine in this Chapter the principal powers of the Minister in relation to local authority administration. This will enable us to assess the role of the executive in central-local relations. For this purpose, firstly, it is intended to discuss the ministerial powers in relation to local authority by-laws, followed by an analysis of the authority of the Minister in connection with the approvals and confirmations in local authority policy matters.

Finally, attention will be drawn to discuss the vital question with regard to the power attributed to the Minister in dissolving local government institutions and removing their Mayors/Chairmen and councillors.

I.Legislative supervision:Control of by-laws

Local councils exercise legislative power over their respective areas by making by-laws. Describing a local authority by-law, Lord Russell, C.J, in Kruse v Johnson,⁴ stated:

"A by-law of the class we are here considering I take to be an Ordinance affecting the public or some portion of the public imposed by some authority clothed with statutory powers, ordering something to be done or not to be done; and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which but for the by-law they would be free to do or not to do as they please. Further, it involves this consequence, that if validly made it has the force of law within the sphere of its legitimate operation".⁵

With regard to the powers of making by-laws it is clear that the local authorities have been duly authorised to make their own by-laws. Lord Russell, C.J, in Kruse v Johnson, stated:

"We thus, find that Parliament has thought fit to delegate to representative public bodies in towns and cities and also in counties the power of exercising their own judgement as to what are the by-laws which to them seem proper to be made for good rule and Government in their own localities".⁶

4.[1898] 2 Q.B. 91

5.ibid.at p.96

6.ibid.

For example, the Municipal Councils Ordinance, provides:

"Every Municipal Council may from time to time make and when made may revoke or amend such by-laws as may appear necessary for the purpose of carrying out the principles and provisions of this Ordinance".⁷

Consequently it is apparent that by means of the power granted to the local authorities in making their own by-laws an opportunity is being provided for the local government institutions to take decisions with regard to fundamental objectives of their local councils. This could be regarded as an important instrument as the decision making power of fundamental responsibilities of local government institutions is in the hands of the representatives of the people.

However, although the above-discussed provisions imply that the local government institutions are empowered to make their own by-laws, it is apparent that the sole authority of making by-laws is not in the hands of the local authorities. The most important feature to be noted in this respect is the authoritative power of the Minister of Local Government in validating a local authority by-law. Consequently, in his judgement, deciding the validity of a particular by-law of the Colombo Municipal Council, De Kretser, J, observed:

"By-law 47 is kept alive in the present Municipal Councils Ordinance by section 320 which provides

7. Municipal Councils Ordinance, section 267(1), Urban Councils Ordinance, section 153(1), Town Councils Ordinance, section 152(1), Village Councils Ordinance, section 42.

for the continuance of existing by-laws and section 267 provides for the municipality to have the power from time to time to make by-laws as may appear necessary for the purpose of carrying out the provisions of this Ordinance while section 268 enacts that no by-law shall have effect until it had been approved by the Minister, confirmed by the Senate and the House of Representatives and notification of such confirmation is published in the Gazette while sub-section 2 states that every by-law shall upon the notification of such confirmation be as valid and effectual as if it were herein enacted".⁸

Accordingly it is clear that to validate a by-law made by a local authority, the approval of the Minister of Local Government, confirmation by the Parliament and notification of such confirmation published in the Gazette are essential. In England the procedure for making local authority by-laws is in one way similar to that of Sri Lanka, as the by-laws must receive the sanction from the appropriate Minister in the first instance.⁹ On the other hand, there are certain differences in the respective procedures, as in England, after the by-laws have been made but, one month before application for confirmation of the by-laws is made, notice of the intention to apply for confirmation should be made to the Secretary of State and the local authority must give notice of ~~this~~ intention to apply for confirmation in one or more local newspapers circulated in ~~this~~ area.¹⁰ Also a copy of the by-laws must be deposited at the local authority offices and made available for public inspection without charge.¹¹ In Sri Lanka the publication of by-laws is required only after the by-law has been confirmed by the Parliament.¹²

8. Fernando v Ratnayake, [1972] 75 N.L.R 543, at p.545

9. Local Government Act 1972 section 236(1)

10. ibid. section 236(4)

11. ibid. section 236(5)

12. Municipal Councils Ordinance, s.268(1), Urban Councils Ordinance, s.154(1), Town Councils Ordinance, s.153(1).

In accordance with the English experience, a by-law made by a local authority could be questioned in advance by a citizen who will be affected by the new introduction. By contrast in Sri Lanka, the inhabitants of the local authority area are not given the opportunity of questioning any of the by-laws prior to confirmation and, if any person is affected, then he will have to seek justice through the courts only after the by-laws have been confirmed by the Parliament. Nonetheless, it is important to note that the local authorities of Sri Lanka must satisfy not only the Minister of Local Government, but--generally, also, almost all the members of the Parliament in order to obtain confirmation for the by-law. Thus, it could be argued that local authority by-laws in Sri Lanka are twice exposed to the intervention of the Parliament as it is essential to get the approval from the Minister and the confirmation from the Parliament to validate a by-law, whereas in England only the confirmation of the Minister is necessary in this respect. Under these circumstances, it is essential to examine the nature, extent and effects of these interventions by the Minister.

It is apparent that the intervention by the Minister with local authority by-laws is two fold. On the one hand, as discussed above and will be dealt in detail in the forthcoming paragraphs, the Minister's prior approval and the confirmation of the Parliament are vitally important for a local authority to obtain validity for its by-laws. On the other hand, as will be apparent shortly, the Minister of

Local Government retains the sole authority to enact standard by-laws in relation to local authorities.

1.Approval by the Minister and confirmation by Parliament

As mentioned earlier, it is essential in the first place to acquire the Minister's approval for a local authority by-law, prior to the obtainment of the confirmation from the Parliament. This emphasises the fact that in theory the requirement of an approval from the Minister has exposed the local authorities to the supervision of the executive. On this ground it could be argued that if the Minister is not satisfied with the by-law which is in question or for some reason has a personal grudge against the respective local authority, then he has the power to withhold his approval for that particular by-law. For instance, if the by-law in question is of an authority which consist of councillors who belong to the opposition party of the Government, there is a possibility of the Minister rejecting the said by-law. On the other hand, with regard to the confirmation by Parliament it could be said that this provides an opportunity for any of the members of the Parliament to focus their attention on the particular local authority. Discussing this particular aspect, Tressie Leitan points out:

"Central legislative surveillance of local authority activity is possible on a number of occasions. By-laws passed by local bodies have to be placed before the legislature- which provides an opportunity for any of its members to focus attention on the functioning of local government. Questions relating to local authorities can be asked of the Minister of Local Government".¹³

13.T.Leitan, Local government and decentralised administration in Sri Lanka, Lake House Investments Ltd., Colombo, 1979, p.95.

Consequently, it could be argued that in accordance with the discretionary and supervisory powers granted to the Minister in relation to the approval and confirmation of by-laws, even the Parliament can ultimately decide that they are not satisfied with the by-law and refuse to grant confirmation. Nevertheless, practically it is clear that the Minister and the Members of Parliament have not used this power overwhelmingly. Although there have been certain instances, such as the refusal by the Parliament to confirm the by-laws of the Galle Municipal Council to increase water rates within the area¹⁴, it appears to be that most of the local authority by-laws presented to the Parliament had obtained due confirmation.¹⁵ Moreover, according to the recent statistics,¹⁶ it appears that the Minister and the Parliament had no hesitation in granting the approval and the confirmation for local authority by-laws.¹⁷ The statistical data tabulated below, demonstrates this factor in this respect.

Year	M.C.	U.C.	T.C.	V.C.	D.C.
1979	3	5	17	24	-
1980	6	7	13	16	-
1982	3	14	-	-	8

Table VI - Number of by-laws confirmed

Source: Administrative Reports of the Commissioner of Local Government, 1979-1982

However, on the other hand, when the ministerial powers in making standard by-laws are taken into account it appears that the Minister of Local Government is endowed with overwhelming powers over the local government institutions.

14. Administrative Report of the Commissioner of Local Government 1962-63, p. BB 16

15. Administrative Report of the Commissioner of Local Government 1979, pp. BB 34-35

16. Administrative Report of the Commissioner of Local Government 1980, p. BB 23

17. Administrative Report of the Commissioner of Local Government 1982, p. BB 41.

2. Standard by-laws

The Local Authority Standard By-Laws Act of 1952 specifies:

"It shall be lawful for the Minister to frame draft by-laws with respect to any subject or matter with respect to which a local authority is empowered by any other written law to make by-laws and to cause such draft by-laws to be published in the Gazette".¹⁸

When the draft by-laws are approved by resolution passed by the Parliament and the notice of such approval is published in the Gazette, the draft by-laws become standard by-laws.¹⁹ On the other hand these Standard by-laws have the same effect as by-laws made by the local authorities,²⁰ and on the other hand the standard by-laws are made at the discretion of the Minister, whenever and wherever he feels necessary, and local authorities have no power to intervene. Moreover, according to sub-section 3 of section 3 of the Act,

"Where the standard by-laws with respect to any subject or matter come into force in the area within the administrative limits of any local authority, all by-laws with respect to that subject or matter previously made or deemed to have been made by that local authority . . . and all other by-laws inconsistent with the standard by-laws shall be deemed to be repealed".²¹

Consequently, the most notable feature in this process is the Minister's solitary power to make standard by-laws for local authorities, without leaving any provision for the local authorities to intervene with the decision. However, it should also be noted that, according to the Local Authority Standard By-Laws Act, the local authorities have

18. Local Authority Standard By-Laws Act 1952, section 2(1)

19. ibid. section 2(3)

20. ibid. section 3(1)

21. ibid. section 3(3).

the power to amend, add^{to}/or repeal any standard by-laws adopted under this Act with the exception that the amendment or addition may not contain any provision which the local authority is not otherwise empowered to make under any other written law.²² The Act specifies that the power granted to the Minister to make standard by-laws will not in any sense affect the power of a local authority to make by-laws,²³ and also that no greater validity will be given to the standard by-laws adapted by the councils.²⁴

Accordingly it could be argued that the Minister of Local Government has no overwhelming power in relation to the making of local authority by-laws. According to the statutory provisions, although it is apparent that the Minister and the Parliament are empowered with overwhelming authority, in practice it is clear that this is not so. Nevertheless, the power of the Minister to make standard by-laws without the co-operation of local authorities signifies on the other hand that local government institutions are not free from the supervisory powers of the Central Government. However, before we come to a final conclusion with regard to the role of the Minister of Local Government in central-local relations and the effect of his decisions, in connection with a devolution of the Government, it is essential to analyse the power of the Minister in granting recommendations, the conduct of inquiries and the dissolution of local government institutions.

22. ibid. section 3(4)

23. ibid. section 5(1)

24. ibid. section 5(2).

II. Executive controls: The inquiries and investigations

An analytical evaluation of the local authority functions emphasises the fact that the Minister or on his behalf, the Commissioner of Local Government, who is the chief officer in the Department of Local Government as discussed in Chapter Five, has the power to intervene with local authority affairs. Thus, either the Minister or the Commissioner of Local Government has the power to grant recommendations and approvals and to conduct inquiries and investigations in relation to local authorities. It will be apparent that on these occasions, the local councils have no authority to refuse the orders from the centre.

1. Recommendations and approvals granted by the Minister

As stated earlier, local authorities are institutions mainly established to carry out the essential municipal services within their area of authority. For this purpose the councillors are empowered to accomplish the relevant duties which are allocated to them under the local authority Ordinances and Acts. This emphasises the fact that in relation to the local authority functions, the discretionary power as to the accomplishment of the essential duties is in the hands of the local authority councillors who are the representatives of the general public. Nevertheless, an examination of the statutory provisions with regard to the functions of the local government institutions reveal that the Minister or the Commissioner of Local Government has the power to interfere with the general procedure of local authorities and bring to the notice of the councils that they have to carry out certain specified functions. Section 195 ~~of the Urban Councils Ordinance, for instance, provides~~

of the Urban Councils Ordinance for instance, provides:

- "The Minister or the Commissioner may,
- a).bring to the notice of any Urban Council any measure which in the opinion of the Minister or the Commissioner ought to be taken within the town administered by the council in the interests of public health or safety; or
 - b).bring to the notice of any Urban Council any general question of administrative policy as to which it is desirable in the opinion of the Minister or the Commissioner that the council should co-ordinate its policy with the policy, generally in force in Ceylon or in any part of Ceylon".²⁵

This points out that the Minister or the Commissioner of Local Government can issue directives with regard to policy matters of a local government institution. When such an order is made then the local authorities are obliged to carry out the relevant functions in accordance to the directive issued by the Minister or the Commissioner. Moreover, the procedure to give effect to any resolution or decision of a Village Committee, demonstrates the authoritative power attributed to the Minister or the Commissioner of Local Government in this context. Consequently, the Village Communities Ordinance provides:

- "The power conferred on a Village Committee . . . shall be subject to the limitation and condition that it shall not be lawful for the Village Committee to give effect to any resolution or decision arrived at in the exercise of those powers until such resolution or decision is approved.
- a).by the Minister with the concurrence of the Minister of Finance in every case where the resolution or decision relates to the imposition of any rate, tax other than a tax on vehicles and animals . . . or toll"
- ²⁶

25.Urban Councils Ordinance, section 195

26.Village Communities Ordinance,section 46.

Also on numerous occasions the approval of the Assistant Commissioner²⁷ who is the head of the Department of Local Government located in districts- subject to an appeal to the Minister, is regarded as essential to give effect to any resolution or decision. This is so, especially if the resolution or decision is related to:

- "a).the purchase, sale or exchange of any land or building;or
- b).the lease of any immovable property handed over to the Committee by a vesting order under section 32;or
- c).the creation of any salaried office in the service of the Committee or the scale of salary to be attached to such office, or the rates of the subsistence or travelling allowances payable by way of reimbursement of the expense incurred by the holder of such office in the performance of any duty".²⁸

This emphasises the fact that the Village Communities for example, had to obtain the approval from the Minister or the Assistant Commissioner of Local Government to discharge their day-to-day functions. Especially, prior to 1952, in addition to the above mentioned instances, the Assistant Commissioner's approval was essential for the decisions taken by the Village Communities regarding,

- "a).the expenditure of any sum of money exceeding one hundred rupees out of the communal fund in any work, scheme or project;or
- b).the formation of any contract or other agreement involving any expenditure exceeding one hundred rupees out of the communal fund;or
- c).the organization of any scheme for the relief of distress to which contributions are to be given from the communal fund; or
- d).the allocation of any part of the communal fund for any purpose specified in the Village Communities Ordinance".²⁹

27.Supra,Chapter Five

28.Village Communities Ordinance, section 46(2) a-c

29.ibid.section 46(2) d-g.

This meant that the Village Communities were under the direct supervision and control of the Minister of Local Government and the Assistant Commissioner of Local Government. For these reasons it could be argued that it is impossible to categorise Village Communities as democratic local government institutions. However, in 1952, it was enacted that, for the above mentioned instances, the Commissioner of Local Government's approval was not a necessity. According to Local Government (Enlargement of Powers) Act of 1952:

"Notwithstanding anything in section 46[of the Village Communities Ordinance], but subject to sub-section (2) of this section, the approval of the Assistant Commissioner shall not be required before effect is given to any resolution or decision of a Village Committee in respect of any matter referred to in sub-paragraph (2) of that section".³⁰

Nonetheless, sub-section (2) of section 2, of the Local Authorities (Enlargement of Powers) Act provided:

"The Minister may in his discretion by order published in the Gazette declare that the provisions of sub-section (1) of this section shall not apply in the case of any Village Committee specified in the order; and so long as such order remains in force the provisions of section 46[of the Village Communities Ordinance] shall apply in relation to resolutions or decisions of that Village Committee in all respects as though sub-section (1) of this section had not been enacted".³¹

Thus, it is clear that the Minister is empowered to re-impose financial control, which is a powerful weapon in his hands, whenever he thinks necessary. Discussing this aspect, Tressie Leitan has pointed out:

"That this is a powerful weapon in the hands of the Minister, which he does not hesitate to

30. Local Authorities (Enlargement of Powers) Act, section 47(1)

31. ibid. section 2(2).

use as the necessity arises, is proved by the fact that financial control was re-imposed on five Village Councils in 1952, on two Village Councils in 1953, on twenty one in 1954, on ten in 1955, on one in 1956, on eleven in 1957 and on five in 1958".³²

Accordingly, it could be questioned as to whether it is necessary to have such controls over Village Councils. It is apparent that all these local authorities are creatures of statute and they consist of councillors elected by the inhabitants of the area. Henceforth, the council should have the power to carry out these necessary functions on their own, without the approvals and confirmations either from the Assistant Commissioner or from the Minister or in some cases from both of them. Furthermore, it could be argued that these approvals and recommendations of Ministers make the local authorities more or less agents of the Central Government and with the passage of time gradually this will not only ruin the implication of local self-governing institutions, but also will restrict the possibility of devolving authority to local councils as almost all the decisions regarding planning and policy matters are taken by the Central Government. The implications of such controls are described by Hart and Garner in the following terms:

"Powers which thus, permit local discretion to be overruled by the central departments go a long way to destroy the idea of local self-government and reduce local authorities to little more than agents of the Central Government".³³

However, on the other hand, the "inside information" in relation to the decisions of the Central Government, in re-imposing financial control over Village

32. T. Leitan, op.cit., p.10

33. W.O. Hart and J.F. Garner, Hart's introduction to the law of local government and administration, 9th edition, London, Butterworths, 1973, p.361.

Communities demonstrates the fact that, it is essential to "keep an eye" over the administration of the local government institutions. Consequently, it is appropriate to point out a few details about the Village Community administration. From the point of view of the Commissioner of Local Government:

- "The effect on the administration on Village Committees of the powers conferred by the Enlargement of Powers Act[1952] was watched with considerable interest. While some committees richly deserved the extension of their powers by their capable handling of the finances and general high standard of administration, there were others which failed to grasp the opportunities of service that the enlarged powers conferred on them and still others though happily few in number whose Chairmen found in the new dispensation an avenue for malpractice and abuse of powers."
- "The details of all these cases cannot be enumerated. In order however, to illustrate the type of unauthorized transactions committed by these Chairmen, a few instances are given."
- "Some Chairmen did not deposit the collections to the credit of the communal fund but temporarily misappropriated them. Monies were drawn sometimes running into several thousands, for a specific purpose, but no work was started or agreement entered into. The Chairman of one local authority for instance, withdrew a sum of over Rs.14,000/= on payment orders issued by himself in his own favour and did not bring this into account. Contracts were entered into without advertisement or proper selection of contractors by tender procedure. Monies were paid from the communal fund on works without obtaining the necessary certificates from Superintendents of village works in accordance with the rules. Payments were made by some Chairmen without being authorized to do so by the Committees. Large sums of money were paid on works which would have been completed at a fraction of the expenditure incurred. The Chairman of one Village Committee, for instance, made payments amounting to over Rs.40,000/=-, without the approval of the Committee for work on a road, for work on which was at a later investigation assessed at only Rs.4500/=-! He further incurred over Rs.4,000/= on check roll labour without the approval of the Committee or Assistant Commissioner of Local Government."
- "Such glaring cases of abuse of powers or malpractice by some Chairmen of Village Committees necessitated

minds, we will now draw our attention to examine the rest of the authoritative powers of the Minister, before deciding as to the extent of controls which / ^{are} necessary from the Central Government over the local authorities, especially in connection with a devolution of Government.

2. Inquiries and investigations conducted by the Minister

The powers of the Minister to hold inquiries and investigations regarding the local authority affairs is seen as a powerful weapon in the hands of the Minister, which could be used even to dissolve a council. It enables the Minister to interfere with local authority functions according to his discretion. According to the Municipal Councils Ordinance:

"If at any time it appears to the Minister that any Municipal Council is omitting to fulfil any duty or to carry out any work imposed upon it by this Ordinance, or any other written law, he may give notice to the council that unless within fifteen days the council shows cause to the contrary, he will appoint a special officer to inquire into and report to him the facts of the case and to recommend what steps such officer thinks necessary for the purpose of fulfilling such duty or carrying out such work".³⁵

The inquiry, if it is practicable, is to be conducted in an open manner³⁶ and after the inquiry according to the report the Minister may determine what duty or work shall be done or executed and make an order requiring the council, within a time to be specified in such order, to fulfil such duty or carry out such work.³⁷ This will, as will be apparent later, even enable the Minister to dissolve the council or to remove the Mayor or the Chairman. Such an

35. Municipal Councils Ordinance, section 280

36. ibid.

37. ibid. section 281.

inquiry, for instance, took place in the year 1960. The Galle Municipal Council had failed to manage their finances³⁸ and the Minister of Local Government had warned the council to rehabilitate its finances and to re-organize the administration. However, the council failed to do so and due to the grounds of failure to bring the council's accounts up to date, failure to settle arrears of loan instalments, reduction of the consolidated rates, failure to settle bills and neglect to maintain the electricity system, the Minister dissolved the council on 25th July 1962.³⁹

However, in most of the cases the Minister makes orders to the council to carry out the outstanding duties. Also, it should be noted that, the power of the Minister to make inquiries does not include the power to dissolve the councils, even if he is not satisfied with the progress of the council. It is significant that the power of inquiry is a necessity, as it is essential that local authority functions should be carried out in the best possible manner for the welfare of the citizens and for these purposes some limited central supervision is obviously essential. However, the argument here is regarding the extent of the Minister's powers to make inquiries and orders regarding outstanding duties. When the Minister makes an order to hold an inquiry after the receipt of the report of the officer appointed under section 280 of the Municipal Councils Ordinance, the Minister has the power to determine what duty or work shall be executed by the council⁴⁰ within a time specified by him. If the council fails to carry out the

38. Local authority finance will be discussed in detail in Chapter Eight

39. Administrative Report of the Commissioner of Local Government, 1961-62, p.11

40. Municipal Councils Ordinance section 281.

necessary functions within the specified period, then again the Minister "may direct the Mayor or appoint any other person to fulfil such duty or to carry out such work".⁴¹ However, the Minister can also decide that, instead of appointing another person to that particular local authority to carry out the necessary duties, he should dissolve the Municipal Council. The powers of the Minister to dissolve a council will be discussed in greater detail in a later section. Consequently, if the Minister decides to dissolve a Municipal Council for the reason that the council was not able to carry out the instructed duties, the power to hold inquiries can in effect decide the life span of a local authority. This shows that the Minister of Local Government is granted ultimate authority. In England under the Local Government Act of 1972, the power of the Minister to hold inquiries stipulates:

"Where any Minister is authorised by this Act to determine any difference, to make or confirm any order to frame any scheme, or to give any consent, confirmation sanction or approval to any matter, or otherwise to act under this Act and where the Secretary of State is authorised to hold an inquiry, either under this Act or under any other enactment relating to the functions of a local authority, he may cause a local inquiry to be held".⁴²

Other than this provision, the Local Government Act provides only a set of powers for rendering such inquiries effective. However, in England either the Minister of Local Government or the Secretary of State acting on his behalf, will not go to the extent of dissolving a local authority as a result of an inquiry held to supervise the functions of the council. In England under the Local Government

41. ibid. section 282

42. Local Government Act of 1972, section 250(1).

Act there is no provision either for the Minister or for the Secretary of State to dissolve a council. On such instances, the Secretary of State has the power to appoint a Commissioner with powers to discharge the defaulting local authority's functions at their expense. Moreover, the Secretary of State could reduce the payment if any, from the subsidies from the Central Government to ^{any} defaulting authority.⁴³ However, according to Asher v Secretary of State for the Environment⁴⁴, the Secretary of State has a wide discretion when choosing which power he will use in such a case. This emphasises the fact that an inquiry held in England with regard to the functions of a local authority will not result in the dissolution of that local government institution. Thus, it could be argued that the sanctions which are applicable in England with regard to local authority inquiries could be proposed as alternatives to the present methods which implies that the life span of a Sri Lankan local authority could be decided at the discretion of the Minister of Local Government. However, it should be noted that the power of the Minister to hold inquiries against a local authority regarding the non-compliance with local authority functions is not the basic element for a decision to dissolve a council. It would be easier to understand this theory in the light of the powers of dissolution of local authorities to which we now turn.

43. See for example the Housing Finance Act, 1972

44. [1974] 2 A.E.R 156.

III. Dissolution of local authorities and removals of Mayors/Chairmen and councillors

It could be argued that the strongest weapon in the hands of the Minister of Local Government in controlling the local authorities is the power to dissolve the local government institutions. As pointed out earlier⁴⁵, in England the Minister or the Secretary of State has no powers to dissolve a local authority. Consequently, it could be said that the power of the Minister in dissolving a local authority could affect a future decentralisation of the Government as this has made the local authorities more or less agents of the Central Government. Thus, it is essential to examine in detail the power of the Minister to dissolve a local government institution.

1. Dissolution of local authorities

It is clear according to the statutory provisions that the Minister of Local Government has the sole authority to decide whether a local authority should be dissolved or not. Commensurate with the Municipal Councils Ordinance:

"If at any time upon representation or otherwise it appears to the Minister, that a Municipal Council is not competent to perform or persistently makes default in the performance of any duty or duties imposed upon it, or persistently refuses or neglects to comply with any provision of law, the Minister may by order published in the Gazette direct that the council shall be dissolved and superseded and thereupon such council shall without prejudice to anything already done by it, be

45. Supra, p. 21.

dissolved and cease to have exercise, perform and discharge any of the rights, privileges, powers, duties and functions, conferred or imposed upon it or vested in it by this Ordinance or any other written law".⁴⁶

When a Municipal Council is dissolved by such order , a Special Commissioner, who is a Government officer is appointed "to exercise, perform and discharge, the rights, privileges, powers, duties and functions, conferred or imposed upon or vested in the council or the Mayor".⁴⁷ The Urban Councils⁴⁸, Town Councils⁴⁹ and Village Councils⁵⁰ too are liable to dissolution by the Minister. The record of local council dissolutions in Sri Lanka, shows that the Minister of Local Government has used his power to dissolve local authorities quite frequently in recent years. (See Table VII).

46. Municipal Councils Ordinance, section 277

47. ibid. section 277(2) a

48. Urban Councils Ordinance, section 184

49. Town Councils Ordinance, section 183

50. Village Councils Ordinance, section 54.

Year	M.C.	U.C.	T.C.	V.C.
1952	-	2	-	-
1953	1	3	-	-
1954	-	-	-	1
1955	-	1	-	1
1956	-	-	1	1
1957	1	1	1	2
1958	-	-	-	3
1959	-	-	1	-
1960	-	-	1	-
1961	-	1	-	3
1962	1	1	1	1
1963	-	-	1	1
1964	-	-	-	-
1965	-	-	-	-
1966	1	1	2	3
1967	-	1	1	2
1968	-	-	3	2
1969	1	-	1	1
1970	1	6	1	1
1971	-	2	6	8
1973	2	15	11	9
1975	2	14	21	46
1976	7	14	30	65
1977	10	23	43	142
1979	3	4	78	146
1981	3	5	79	220

Year	M.C.	U.C.	D.C.
1981-83	-	-	-

Table VII - Dissolution of local authorities by
the Minister of Local Government

Source: Administrative Reports of the Commissioner of Local
Government, 1952-1984.

In most of these cases, mismanagement of finances, the deliberate ignoring of audit queries,⁵¹ maladministration, neglect of duties, guilt of misconduct or inefficiency⁵² of the council have been given as reasons for the decisions to dissolve local authorities. In fact, the Minister has even used his power of dissolution on a local authority which had problems with its administration. In this case the Commissioner of Local Government pointed out:

"In the . . . case that of Kollonnawa Urban Council the meetings from December 1951 onwards were not conducted in a seemingly and dignified manner, the Chairman was acting arbitrarily in certain matters; one member of the council was alleged to be in unlawful occupation of a land belonging to the council, another member was in arrears of electricity dues amounting to nearly Rs.3000/=. The Chairman's party of three members and the opposition consisting of four members could not carry on the administration of the town, and although the Minister issued a directive to the Chairman to see that the affairs of the council were carried on harmoniously, the administration fast deteriorated and the council had to be dissolved".⁵³

Moreover, a dissolution could also be based on party political grounds.⁵⁴ As Tressie Leitan pointed out:

". . . there also seem to be a feeling among officials and councillors that political motivation and pressure from the local Member of Parliament cannot be ruled out of dissolutions altogether. Administrative lapses and shortcomings they point out are not difficult to find -with a few exceptions- in almost any local council in Sri Lanka, therefore the decisions as to whether a council should be dissolved or not could well be political".⁵⁵

However, all these instances indicate that the Minister has discretionary power to dissolve local councils. Even the Supreme Court was of the opinion

51. Administrative Report of the Commissioner of Local Government for 1952, S.P.No. 23 of 1953

52. Administrative Report of the Commissioner of Local Government for 1953, S.P.No. 22 of 1954

53. op.cit., note 52, p.17

54. T. Leitan, op.cit., p.106.

55. ibid.

that the dissolution of local authorities should be a necessary power of the Minister. Thus, in Sugathadasa v Jayasinghe⁵⁶, it was stated:

"It is by no means unusual that in enactments setting up administrative or autonomous bodies there should be special provision made for their summary dissolution. Indeed in the normal case, the power of dissolution of such a body would appear to be a necessary provision. Even in the case of a sovereign body like the British Parliament there exists a power (by virtue of the prerogative of the Crown) to dissolve it at any time without question, though the matter is now governed by certain well defined convention".⁵⁷

It has been seen that the Minister may dissolve a local authority as a result of invoking his power of inquiry. Although the holding of an inquiry does not necessarily preface an ultimate dissolution, the Minister could base a case on one of the grounds under section 277 of the Municipal Councils Ordinance, subsequent to an inquiry. For example, if the Minister decides that it appears to him that a certain local authority is omitting to fulfil its duties and that it is necessary to hold an inquiry, depending on the results of this inquiry he may order the council to carry out the necessary work.⁵⁸ At the same time it could be argued that if it appears to the Minister that a certain local authority is not carrying out its duties satisfactorily, he can use the power to dissolve that local authority.

The dissolution of the Jaffna Municipal Council on the 29th May 1966, could be pointed out as an example of this argument. There had been a number of complaints to the Minister as to the conduct of the Municipal Council and

56. 1957 59 N.L.R 457

57. ibid at p.460

58. Municipal Councils Ordinance, section 277.

of the councillors and as a result of these complaints the Minister had sent the Commissioner of Local Government to inquire into these matters with instructions to report immediately. The Commissioner of Local Government visited the Jaffna Municipal Council on the 27th and 28th May 1966 and reported orally and then in writing to the Minister on the 29th May 1966. On the same day the Minister of Local Government made an order stating that it appeared to him that the Jaffna Municipal Council was not competent to perform duties imposed upon it and that pursuant to the powers conferred upon him by section 277 he decided that the council should be dissolved and superseded.

Prior to 1979, in Sri Lanka, it was not necessary to hold an inquiry before a dissolution of a local authority. In fact even the Supreme Court decided incorrectly that the Minister is the sole judge to decide as to whether the council was not competent to perform its duties and that he must be guided only by the merits of the case and was not obliged to give a hearing to the councillors and consider their objections if any.⁵⁹ This granted the Minister an essential confirmation of his powers and the above stated figures⁶⁰ indicate the superior authority he had over the local authorities. However, the decision of the Privy Council in Durayappa v Fernando⁶¹, which overruled the decision of the Supreme Court in Sugathadasa v Jayasinghe, made it clear that prior to a dissolution it is essential that the parties concerned should be given the opportunity of a hearing. It

59. Sugathadasa v Jayasinghe, op.cit., p.467

60. See Table VII, p.242

61. (1966) 68 N.L.R 265.

was stated in Durayappa v Fernando:

"The legislature has enacted a statute setting up municipal authorities with a considerable measure of independence from the Central Government, within defined local areas and fields of Government. No Minister should have the right to dissolve such an authority without allowing it the right to be heard upon that matter unless the statute is so clear that it is plain it has no right of self-defence".⁶²

As discussed in detail in the previous Chapter⁶³, as a result of this decision the provisions of the local authority Ordinances with regard to the powers of the Minister to dissolve a local authority were amended in 1977 and the new provisions stressed the need for an inquiry⁶⁴ prior to any such dissolutions. According to the new provisions:

"The Minister shall before making an order under sub-section 1 appoint for the purpose of satisfying himself in regard to any of the matters referred to in sub-section 1, a retired judicial officer to inquire into and report upon such matters within a period of three months and the person so appointed shall in relation to such inquiry have the powers of a Commissioner of Inquiry appointed under the Commission of Inquiry Act".⁶⁵

Although this measure enabled the councillors to present their objections prior to the dissolution of a council, it appears that the requirement of an inquiry made no difference to the attitude of the Minister in dissolving local authorities. For instance, the statistical information discussed above⁶⁶ illustrates that during the period 1977 to 1981 many local government institutions were dissolved by the Minister of Local Government and were under the

62. ibid. at p.270

63. Supra, Chapter Six

64. Local Authorities Elections (Special Provisions) Law, No.24 of 1977

65. ibid. section 111

66. See Table VII.

authority of the Special Commissioners. In 1977, for instance, out of the twelve Municipal Councils in the island ten were dissolved by the Minister. It is also important to note at this point that none of the members of these dissolved local authorities sought relief against the decision of the Minister to dissolve the local authorities. This implies that either the members of these local authorities were satisfied with the inquiry which resulted in the dissolution of their councils or that the decision in Durayappa which will be examined in detail in the next Chapter, supplied food for thought to the effect that the courts were reluctant to quash or condemn an unlawful governmental act.

2. Removals of Mayors or Chairmen by the Minister

In addition to the above-discussed powers of the Minister to dissolve local authorities, he also has the authority to remove the Chairmen of Village Councils.⁶⁷ and Chairmen and all or any members of Town⁶⁸ and Urban Councils⁶⁹. The reasons for such removals are described in the relevant Ordinances. According to the Urban Councils Ordinance:

- "If at any time the Minister is satisfied that there is sufficient proof of,
- a). persistent refusal to hold or attend meetings or to vote or to transact business at any meetings that may be held; or
 - b). wilful neglect or misconduct in the performance of the duties imposed by this Ordinance; or
 - c). persistent disobedience to or disregard of the directions, instructions or recommendations of the Minister or of the Commissioner; or
 - d). abuse of the powers conferred by this Ordinance on the part of the Chairman or

67. Village Councils Ordinance, section 54

68. Town Councils Ordinance, section 183(1)

69. Urban Councils Ordinance, section 184(1).

- on the part of any of its members,
thereof, the Minister may, as the
circumstances may require, by order
published in the Gazette-
- a). remove the Chairman from office; or
 - b). remove all or any of the members of
the council from office, and direct
that a by-election in accordance with
the provisions of written law for the
time being applicable in that behalf
shall be held for the purpose of
electing a member in place of each member
so removed; or
 - c). dissolve the council."⁷⁰

However, there is no provision under the
Municipal Councils Ordinance for the Minister to remove the
Mayor or members of the Municipal Council. Nevertheless,
as mentioned earlier, under section 277 of the Municipal
Councils Ordinance, the Minister is empowered to dissolve
a Municipal Council. According to the statistical data
of the removal of Chairmen and councillors of local
authorities, it is apparent that mostly the Village Council
Chairmen were removed by the Minister under his powers.
For instance, in 1957, the Chairmen of five Village Councils,
in 1958 of two Village Councils, in 1961 of two Village
Councils, in 1963 of one Village Council, in 1966 of two
Village Councils and in 1968 of six Village Councils⁷¹
were removed from office and during this period only
two Chairmen of Urban Councils were removed by the
Minister. As pointed out earlier, Village Councils were
the most handicapped local government institutions among
the local authorities and also on various occasions there

⁷⁰. ibid.

⁷¹. Administrative Reports / of
the Commissioner of Local
Government for the years 1958-1968.

have been allegations against their Chairmen.⁷² Consequently, it could be argued that this would have been the reason for the Minister to have removed the Chairmen mostly from Village Councils. However, this provision enables the Minister not only to keep a close watch over the local authorities, but also to remove their Chairmen or councillors whenever he considers it to be necessary.

Prior to 1977, according to the statutory provisions, there was no necessity to hold an inquiry before the removal of Chairman and /or councillors of a local authority. However, since 1977, as a result of the decision in Durayappa v Fernando, discussed in detail in Chapter Seven, amendments were made to the provisions in Municipal, Urban, Town and Village Councils Ordinances in relation to the power of the Minister to dissolve a local authority or to remove Chairmen and /or councillors of local authorities. According to these amendments since 1977, it is essential that an inquiry is held before the removal of a Chairman and /or councillors of a local government institution. For instance, amendments to section 184 of the Urban Councils Ordinance provide:

- "a). The Minister shall before making an order under sub-section (1) appoint for the purpose of satisfying himself in regard to any of the matters referred to in sub-section (1), a retired judicial officer to

72. Supra, p. 234

inquire into and report upon such matter within a period of three months and such officers shall in relation to such inquiry have the powers of a Commissioner of Inquiry appointed under the Commissions of Inquiry Act.

b).When the Minister appoints a retired judicial officer under sub-section (a) to inquire into any matter,the Minister may as the circumstances of each case may require by order published in the Gazette.

i.suspend the Chairman from office and direct the Vice-Chairman or where the office of Vice-Chairman is vacant or where the Vice-Chairman has been suspended ,the Assistant Commissioner of Local Government of the region to exercise the powers and perform the duties of the Chairman;or

ii.suspend any member from office;or

iii.suspend the council and direct the Assistant Commissioner of Local Government of the region to exercise the powers and perform the duties of the council and its Chairman."⁷³

Nevertheless,the most fascinating feature in connection with the removal of Chairmen and councillors is that the Minister's decision is being treated as final and conclusive and the Chairmen or the councillors are not entitled to a writ of certiorari to quash the Minister's decision. It could be argued that this is mainly due to the attitude of the courts with regard to the orders of the Minister and thus, it is essential to analyse the case-law in this respect.

It is significant to note that there are

73.Local Authorities Elections (Special Provisions) Law, No.24 of 1977,section 134.

only three cases in connection with the removal of Chairmen or councillors from a local authority. This, confirms the fact that there is a dearth of case-law in relation to local government in Sri Lanka and this raises the question, as will be discussed ⁷⁴, whether this is owing to the attitude of the judiciary with regard to Central Government decisions over local authorities of the country. However, the attitude of the courts in relation to the powers of the Minister in removing the Chairmen and councillors appears to be more or less an encouragement to the authoritative power of the Minister. Out of the three cases, in two it has been decided incorrectly that there is no necessity for the Minister to observe the rule of natural justice when removing Chairmen and /or councillors as the Minister is performing an administrative act only. Thus, in Gunapala v Kannangara ⁷⁵, it was decided by Swan, J., that, when the Minister of Local Government by virtue of the power vested in him by the Village Communities Ordinance removes the Chairman of a Village Committee from office on being satisfied that there is sufficient proof of misconduct in the performance of his duties, he performs an executive and not a judicial act. The decision of Swan, J., in this case could be criticised, especially in the light of the decision taken by Lord Reid in Ridge v Baldwin ⁷⁶. Although prior to this decision the general attitude of ^{the court} was

74. Infra, Chapter Seven.

75. (1955) 57 N.L.R. 69

76. [1963] 2 A.E.R. 66.

to exclude judicial review, where such expressions were included,⁷⁷ as Professor J.F.Garner has correctly pointed out, since the decision in Ridge v Baldwin it is apparent that the courts will not lightly accept such expressions such as "if the Minister is satisfied" as totally excluding review.⁷⁸ Lord Reid in Ridge v Baldwin, criticising Nakuda Ali v Jayaratne, stated:

"This House is not bound by decisions of the Privy Council and from my point nothing short of a decision of this House directly in point would induce me to accept the position that, although an enactment expressly requiring an official to have reasonable grounds for his decision, our law is so defective that a subject cannot bring up such a decision for review however, seriously he may be affected and however, obvious it may be that the official acted in breach of his statutory obligation".⁷⁹

Moreover, according to Professor Garner, disciplinary action is a topic which one might think is most suitable for judicial review, although, it is mingled with the administration.⁸⁰ Thus, it could be pointed out that the Minister's decision in removing a Chairman or a councillor could be reviewed by the judiciary. This was the opinion of Gunasekera, J., in Subramaniam v The Minister of Local Government and Cultural Affairs⁸¹, a case decided two years after the decision in Gunapala v Kannangara. In Subramaniam's case it was decided that an order under the Town Councils Ordinance removing a member of a Town Council from office can be made by the Minister only if he is satisfied that there is sufficient proof of any of the facts enumerated in that section and that when making such order the Minister not only exercises a power

⁷⁷. Liversidge v Anderson [1942] A.C 206, Nakkuda Ali v Jayaratne [1951] A.C 66

⁷⁸. J.F.Garner, Administrative Law, 5th edition, Butterworths, 1979, p.184

⁷⁹. [1963] 2 A.E.R 60, at p.79

⁸⁰. J.F.Garner, op.cit., p.188

⁸¹. (1957) 58 N.L.R 254.

which involves legal authority to determine questions affecting to the rights of subjects but is also under a duty/act judicially.

However, in 1965 again H.N.G.Fernando, A.C.J., had to decide in Silva v Jayasuriya⁸² whether the order of the Minister of Local Government to remove the Chairman of an Urban Council could be quashed by a writ of certiorari.⁸³ In this case the petition alleging maladministration on the part of the present petitioner as Chairman of the Urban Council was received by the Commissioner of Local Government and for this reason the Minister had removed the petitioner from the office of Chairman of an Urban Council under the provisions of the Urban Councils Ordinance. Dismissing the application for a mandate in the nature of a writ of certiorari, it was held that, in so far as the order had the effect of removing the Chairman from office, the Minister was duly empowered to make it under the Urban Councils Ordinance, being essentially an administrative order. In deciding this H.N.G.Fernando, A.C.J., stated:

"Counsel has to concede that an order under section 184 simpliciter, is a purely administrative one referable to the intention of the legislature that the Minister is entrusted with the supervision of the administration of local authorities and with the executive power to be exercised in the courts of such supervision. This being in my opinion the dominant purpose of section 184 in order under that section is essentially an administrative order properly within the functions of the Minister In so far, therefore, as the order has the effect of removal from office I must hold that the Minister was duly empowered to make it".⁸⁴

82.1965 C.L.W Volume LXIX 54

83. ibid.

84. ibid. at pp.55-56.

However, it could be argued with regard to H.N.G.Fernando, C.J.'s decision that the Minister's decision in removing Chairmen and councillors is not purely administrative. In the Canadian case of Voyager Explorations Ltd. v Ontario Security Commission⁸⁵ it was said that the distinction between "administrative" and "judicial" is as elusive as the Scarlet Pimpernel. This emphasises the difficulty in identifying whether a certain act is administrative or judicial. Discussing this question Professor Garner points out:

"It is clear that natural justice need not be observed in the course of the legislative process and it is also clear that if property rights are at stake natural justice must be observed as evidenced by the housing and slum clearance cases. It also must be observed if a man's reputation is called into question".⁸⁶

In Silva v Jayasooriya, it should be noted that the Chairman of an Urban Council was removed due to allegations of maladministration on his part in administering the council. Hence, it could be argued that in this particular case the Chairman's reputation was called into question and for this reason that there was a necessity to observe natural justice.

However, in this case the decision of H.N.G.Fernando, A.C.J., that there is no necessity to grant the petitioner the opportunity of an inquiry was weighted heavily by the evidence to the effect that the rules of natural justice had been complied with sufficiently. The petitioner was previously furnished with a report on the two

⁸⁵. [1970] 1 Q. R. 237, at p. 242

⁸⁶. J.F. Garner, op.cit., p. 139.

petitions against him and the inquiry continued on 29th April, 8th May and 13th May. In this particular case the petitioner has had an opportunity to defend himself and there was no room for a pronouncement that the rules of natural justice were not applied. However, the attitude of the courts in Sri Lanka in relation to a removal of Chairman and/or councillors of a local authority by the Minister in the light of the above observations appears to be mostly in favour of the Minister's decision. The reason underlying for this attitude is the recognition of ministerial acts as administrative and certain statutory expressions as exclusions of judicial review, by the courts. However, along with the recent developments in the process of judicial review it could be argued, as pointed out earlier, that the Sri Lankan courts should attempt to adopt the attitude described by Lord Reid in Ridge v Baldwin.

However, the decision in Sugathadasa v Jayasinghe further confirmed the power of the Minister in removing Chairmen and councillors of Urban, Town and Village Councils. Hence, it could be argued that at any time, if the Minister is satisfied that there is sufficient proof of any of the above mentioned irregularities⁸⁷, the Minister can remove the Chairmen and/or the councillors. Specifically if the Chairmen and the councillors belong to the opposition of the Government party, there is a strong possibility of the removal of the Chairmen or the councillors, or even all of them under the clause of persistent disobedience to or disregard of the directions, instructions or

87. Supra, p. 235

recommendations of the Minister.⁸⁸ Moreover, even the threat or risk of such removal may be a potent weapon in the hands of the Minister. In fact, even the Member of Parliament of the area could influence the Minister, if he too is not satisfied with the Chairman or the councillors of the local authority in his area. Hence, it is significant that under these circumstances the removal of Chairmen and councillors could take place as a result of political motivations.

Nevertheless, at present the Minister is empowered to remove Chairmen and/or councillors from local authorities and especially, due to the decision of H.N.G.Fernando, A.C.J, in Silva v Jayasooriya, this action is not subject to a writ of certiorari. Moreover, it is significant that the Minister is not reluctant to take advantage of his powers. During the period 1970-71, the Chairmen of five Urban Councils, seven Town Councils and nineteen Village Councils were removed from office⁸⁹. There is no evidence to say that any of them have challenged the Minister's decision, which leaves room for a presumption that impliedly, a decision of the Minister of Local Government is final and conclusive.

Concluding remarks

Administrative controls of local government through the Minister could be usually justified as being essential in order to ensure that at least a minimum standard of efficiency is provided by the local government institutions in their several local services. According to

88. Urban Councils Ordinance, section 184(1)

89. Administrative Reports of the Commissioner of Local Government for the years 1970-71.

Garner:

Local independence, it is urged, should not be permitted to such an extent that, for example, the fire service becomes inefficient or corrupt or that one particular local authority offers a poorer education system than another".⁹⁰

However, on the other hand, it is justifiable to argue that, there should be a limit to these administrative controls. Especially, with regard to the experience in Sri Lanka, if the Government is to devolve power on local authorities, the amount of control exercised through the Minister of Local Government will be vitally important. For example, if the now existing controls are to be continued, it is clear that the local government institutions of the country will more or less be under the domination of the Minister. As pointed out earlier, the Minister's power to approve by-laws and to influence the inquiries and investigations could be regarded as reasonable in this context. However, when the power of the Minister to dissolve local authorities is taken into account, it is apparent that this has granted the Minister overwhelming authority over the local councils. It could be said in this context that this authoritative power of the Minister, has made the relationship between the Central Government and local authorities to shift from being a partner to become an agent of the Central Government. Hence, it is justified in remarking that it is essential that some amendments should be made with regard to the exclusive powers of the Minister of Local Government over the local authorities. The most important reforms should be with regard to the

90. Garner, op.cit., p.451.

ministerial powers of dissolving local councils and removing Chairmen and /or councillors from Urban,Town and Village Councils. As discussed earlier,although the amendments made to the relevant Ordinances in 1977,under the Local Authorities Elections (Special Provisions) Law,No.24 of 1977, required the holding of an inquiry before a dissolution of an authority or a removal of a local authority member,it could be said that it would be far better if we follow the remedial measures taken during such occasions in England. Hence,if reforms could be made to the effect that, when the Minister is satisfied that a certain local authority is not competent in its day-to-day affairs or that a particular Chairman or a councillor of a local council has acted arbitrarily, he may appoint a Commissioner with powers to discharge the defaulting local authority's functions at its expense,and for the Chairman and councillors to pay a fine for whatever misconduct they were liable for. This will not only enable the local authorities to shield themselves from the overwhelming power of the Minister of Local Government,but also will provide the necessary fundamental democratic rights to local government institutions which ^{are} essential for a devolution of the Government.

Chapter Seven

The role of the judiciary in central-local relations

Half a century ago, Sir Ivor Jennings, in one of his lectures on Local Government in the modern Constitution stated:

"Under the British Constitution as now we know it, local authorities have close relations with three sets of other authorities. In the first place they are subject to the administrative jurisdiction of certain Government departments. In the second place they are subject to a general legislative control by Parliament. And thirdly, they are kept within the limits of their jurisdiction by proceedings taken in the courts of law."¹

The legislative power of the local authorities is limited and their actions are circumscribed by statute. The only actions that the local government institutions can lawfully do are those are intra vires a properly construed statute. Hence, it could be argued that as the constructionists of the statute are the courts, they have the responsibility to prohibit certain local action or provide redress to those who claim to have been affected by ultra vires decisions.² Discussing the judicial interpretation of the legal limits of policy discretion in local authorities, Keith Davies points out that the Ultra vires principle plays a main role in central-local relations.³ According to his view:

"If the application (of the doctrine of ultra vires) becomes too lax local authorities will enjoy a wider power than Parliament intended they should have and if it were relaxed altogether their freedom of action would become absolute and their exercise of power would be quite arbitrary

1. Sir Ivor Jennings, Local government in the modern Constitution, Charles Knight and Co. Ltd., 1931, p.1

2. Michael J. Elliott, The role of law in central-local relations, S.S.R.C., 1981, p.31

3. Keith Davies, Local government law, Butterworths, London, 1983, p.62.

If on the other hand the application becomes too strict, local authorities will enjoy a narrower power than Parliament intended they should have; and ultimately they would exercise no independent power at all. Then local government would be transformed into the local arm of Central Government administration, if it did not wither away completely."⁴

Thus, it could be said that the doctrine of ultra vires, is the basis of judicial control. Accordingly, the judiciary could be vitally important, especially after a devolution of the Government in which a number of additional important functions would be in the hands of the local authorities. Hence, it could be essential to safeguard the interests of local authorities from unnecessary interference by the Central Government. In one of his judgements, Lord Denning M.R. stated:

"Local self-government is such an important part of our Constitution that . . . the courts should be vigilant to see this power of the Central Government is not exceeded or misused."⁵

However, it must also be noted that there are problems as well as limitations with regard to the applicability of the doctrine of ultra vires as well as the powers of the courts to intervene with local authority affairs.

With regard to the Sri Lankan experience, it is argued in this Chapter that there are inadequacies and weaknesses in the process of judicial review. This argument is based on an analysis of a comparative study in relation to the experience in England and in Sri Lanka of the ability of the judiciary, in theory and in practice, to interfere with the functions of local authorities. In this respect, it is

4. ibid.

5. R v Secretary for the Environment, Ex-parte Norwich City Council, [1982] Q.B. 808, at p.824.

proposed to examine first the legal status of local authorities as corporations and the role of the courts with regard to central-local relations, followed by an examination of the doctrine of ultra vires and the principles of judicial review to understand the role of the judiciary in central-local relations and the inadequacies and weaknesses in this process.

I. The legal status of local authorities

According to the Municipal Councils Ordinance:

"Every Municipal Council shall be a corporation with perpetual succession and a common seal and shall have power, subject to this Ordinance, to acquire, hold and sell property and may sue and be sued by such name and designation as may be assigned to it under this Ordinance."⁶

The Urban Councils, Town Councils, Village Councils and the Development Councils are established by similar provisions under the respective Ordinances.⁷ This indicates that the local authorities in Sri Lanka are corporate bodies with the common characteristics of corporations which also could be identified as a common feature of the legal status even of the English local authorities.⁸ However, it should be noted that prior to the enactment of the Local Government Act of 1972 in England the Boroughs were creations of the royal prerogative and not of statute.⁹ According to Kyd, a corporation is,

"a collection of many individuals united into one body under a special denomination having perpetual succession under an artificial form and vested by the policy of the law with the

6. Municipal Councils Ordinance, section 34 (1)

7. Urban Councils Ordinance, section 31, Town Councils Ordinance, section 30, Village Councils Ordinance, section 28, Development Councils Act, section 2(2)a

8. C.A. Cross, Principles of local government law, sixth edition, Sweet and Maxwell, 1981, p. 2, J.F. Garner, Administrative Law, fifth edition, London, Butterworths, 1979, p. 390

9. J.F. Garner, op.cit., p. 330.

capacity of acting in several respects as an individual particularly of taking and granting property, of contracting obligations, of suing and being sued."¹⁰

Therefore, the legal status of local authorities as corporations has granted the opportunity of questioning any of their decisions. "The feature of local government law" said Buxton, "which overshadows all others is that local authorities are allowed to do only what the law permits; whenever a council wishes to take action or, more importantly, to spend money in the name of the local authority, it must be able to produce statutory justification for its action. Historically, this limitation springs from the legal status of a local authority as a corporation. . . ."¹¹

In Carimjee Jafferjee and others v The Municipal Council of Colombo,¹² a case decided as early as in 1904, where a rate-payer of the council challenged a decision of the Municipal Council, Layard, C.J., stated:

"I have no doubt if the Municipal Corporation or any other similar body were to do or attempt to do any act in excess of their powers as contained in the Municipal Corporations Ordinance from which they derive their existence and such acts are injurious to the interests of any rate-payer or tax-payer. Such tax-payer or rate-payer has the right to the protection of our local courts by injunction or other appropriate relief."¹³

Consequently, it is significant that according to the Municipal, Urban, Town and Village Councils Ordinances and the Development Councils Act, a statutory body cannot act outside the ambit of statute which created it,¹⁴ and also that an action certainly lies against a public incorporated body, if such corporation acts

10. Kyd on Corporations, p. 13

11. R. Buxton, Local Government, second edition, Penguin Education, 1973, p. 98

12. Balasingham Reports, 1906, p. 75

13. ibid., p. 76

14. Suriyawansa v The Local Government Service Commission, (1947) 48 N.L.R. 433.

dishonestly, corruptly, with improper motives or acts outside the authority or power given by the statute which created the corporation.¹⁵ On such an occasion the courts may decide that the particular action is ultra vires the statutory provisions of the respective Ordinance. Hence, as has been pointed out already, the doctrine of ultra vires is the basis of the role of the judiciary in central-local relations. Nonetheless, before we examine the doctrine of ultra vires it is important to analyse the role of the judiciary in central-local government relations of the country.

II. The role of the courts

Discussing the judicial control of local authorities, Herman Finer stated:

"In the last hundred years or so, a great number of statutes regulating different aspects of local government were passed by Parliament; these considerably increased the powers and duties of local authorities. The exercise of these powers and the performance of these duties have led to innumerable legal disputes and the decisions of the courts have had considerable influence in guiding local government legislation. The courts have intervened because the local authorities being corporate bodies with all their powers and duties laid down by statute have often performed ultra vires acts, or omitted to carry out their proper duties."¹⁶

However, it must be noted that Finer's deductions indicate only a part of the judicial control with regard to central-local relations. According to his view, it is clear that the courts can intervene with local

15. *ibid.*, p. 433

16. Herman Finer, English Local Government, 4th edition, Methuen Co. Ltd., 1950, p. 133.

authority functions and guide the local government legislation whenever the council perform any ultra vires acts. Nonetheless, in accordance with an analysis of the role of the courts, it could be argued that a court decision could be used by local authorities to change the Central Government policy towards local authorities, especially to limit the overwhelming powers of the Central Government in controlling the local authorities of a country or to amend the existing laws. For instance, a particular judicial decision could be used by local authorities for them to acquire additional powers. Discussing, this process Elliott points out:

"the justification for this claim lies in what can be termed as "knock-on" effect. For example, a local authority takes a decision, perhaps in relation to slum clearance, that appealed by a person affected by the order so made. The court hears the appeal and perhaps interprets the powers of the local authority in such a way that policies that may have been common in that authority and many others for some time become legally suspect. So much may this be the case that the local authority may be able to seek from Central Government some assurance that the law be altered to make it more workable by the local authorities; in other words the judicial decision can be used as a standard around which to rally support¹⁷ for changes in Central Government's policy."

Although, - as has been admitted quite correctly by Michael Elliott - this is an area in which very little work has been done by lawyers,¹⁸ a few examples from England as well as Sri Lanka could be given in countenance of this argument, as well as to identify the important role that the courts could perform with regard to central-local relations in a country.

¹⁷. Elliott, op.cit., p.68.

To begin with it is intended to discuss two recent English decisions in this respect. The first concerned is the case of Anns v Merton London Borough Council.¹⁹ In this case a local authority had exercised a power to inspect the foundations of houses, but had done so negligently. A house owner who was affected by this act succeeded in establishing that an action would lie in negligence not only against the negligent builder, but also against the local authority, vicariously liable for its negligent Inspector. The local authority associations protested against this decision and attempted to convince the Central Government that owing to this decision the local authorities were liable for indefinite sums of money to indefinite number of defendants. Secondly, in Hillingdon London Borough Council v Streeting,²⁰ a foreign common-law wife of an Englishman succeeded in demonstrating that a local authority had a duty to provide accommodation for her on arrival in this country under the terms of the Housing (Homeless Persons) Act of 1977. However, the local authority organised a campaign against certain aspects of the Act and succeeded in getting a ministerial guarantee to the particular Act. With regard to these decisions Elliott suggests that there will be amendments/that the "actions of the local authorities forced on them by the courts can be used to wring concessions or promises of actions from the centre".²¹ Elliott's suggestions have been reviewed by Richard Ross as,

"If a case resulted in a local authority being told by the courts that it lacks the power to

18. *ibid.*

19. [1977] 2 W.L.R. 1024

20. [1980] 3 A.E.R. 413

21. Elliott, *op.cit.*, p.69.

do what it (and many others) had done for years local authority associations will lobby Westminster to change the law to sanction what it considered normal and acceptable practice."²²

Incontrovertibly these changes would bring much confidence to the authorities. Moreover, according to the Sri Lankan experience it is comprehensible that the judicial interventions could create more effective results. The Supreme Court decision in Sugathadasa v Jayasinghe²³ and the opposing view of the Privy Council in Durayappa v Fernando²⁴ with regard to the powers of the Minister of Local Government to dissolve a Municipal Council without contemplating the rule of natural justice audi alteram partem, and the aftermath of these decisions, supply ample evidence in favour of the argument that the court decisions could change the policies of the Central Government towards the local authorities. Hence, it is necessary to analyse these two cases and their aftermath.

In Sri Lanka, commensurate with the Municipal, Urban and Town Councils Ordinances²⁵, the Minister is empowered to dissolve a local authority. According to the Municipal Councils Ordinance:

"If at any time upon representation or otherwise it appears to the Minister that a Municipal Council is not competent to perform or persistently makes default in the performance of any duty or duties imposed upon it, or persistently refuses or neglects to comply with any provision of law, the Minister may by order published in the Gazette direct that the council shall be dissolved and superseded and thereupon such council shall without prejudice to anything

22. Richard Ross, A review of the role of law in central-local relations by Michael Elliott, The Modern Law Review, Volume 46, London Stevens and Sons Ltd., 1983, p. 251

23. (1957) 59 N.L.R. 457

24. (1966) 68 N.L.R. 265

25. Municipal Councils Ordinance, section 277, Urban Councils Ordinance, section 196(1), Town Councils Ordinance, section 197(1), Village Councils Ordinance, section 61.

already done by it, be dissolved and cease to have exercise, perform and discharge any of the rights, privileges, powers, duties and functions conferred or imposed upon it or vested in it by this Ordinance or any other written law."²⁶

In Sugathadasa v Jayasinghe²⁷, a case decided in 1957, in which an application was filed for a writ of certiorari quashing the order dissolving the council, it was held that, although a dissolution of the council necessarily affects the legal rights of its members as a body and is independent of policy and expediency, sub-section 1 of section 277 does not impose any duty on the Minister to act judicially or quasi-judicially before he exercises his power of dissolution.²⁸

It was argued before the Supreme Court that it is essential to provide an opportunity for the local authority councillors to present their objections with regard to the Minister's decision prior to a dissolution of the council. This argument did not find favour with any of the three presiding Judges of the Supreme Court. They were of the view:

"the Minister must be guided only by the merits of the case and is not obliged to give a hearing to the councillors and consider their objections, if any. He is the sole judge as to whether the council is not competent to perform its duties, provided however, that there is no misconstruction of the words "not competent" and there are sufficient circumstances from which it is apparent to him that the council is not competent to perform the duties imposed upon it".²⁹

In Sugathadasa v Jayasinghe, a strike of the employees of the Colombo Municipal Council brought about a complete suspension of certain essential municipal services

26. Municipal Councils Ordinance, section 277(1)

27. op.cit., note 23

28. ibid.

29. ibid. p.457.

such as conservancy, garbage removal, supervision of municipal markets and slaughter houses, and prevention and control of infectious diseases. There was no immediate prospect of the strikers returning to work. In the meantime the Council itself was unable to meet in order to decide on what measures to adopt, nor could its executive officers take the necessary measures on their own responsibility without any mandate from the Council. In these circumstances the Municipal Council was summarily dissolved by the Minister of Local Government under the provisions of section 277 of the Municipal Councils Ordinance and a Special Commissioner was appointed.

However, some years later, the Privy Council under similar circumstances took the contrary view regarding the powers of the Minister to dissolve a local authority. Consequently, in 1966 in Durayappa v Fernando, when the order of the Minister of Local Government to dissolve the Jaffna Municipal Council was challenged in the certiorari proceedings by the Mayor of the Jaffna Municipal Council at the time of the dissolution, the Privy Council decided that, before exercising his power under section 277, the Minister was bound to observe the rule of natural justice, audi alteram partem.

Delivering the judgement, Lord Upjohn stated:

"The legislature has enacted a statute setting up municipal authorities with a considerable measure of independence from the Central Government within defined local areas and fields of Government. No Minister should

have the right to dissolve such an authority without allowing it the right to be heard upon that matter unless the statute is so clear that it is plain it has no right of self-defence."³⁰

Accordingly, by the decision in Durayappa v Fernando the judgement in Sugathadasa v Jayasinghe was overruled. The most important impact of this decision was that, due to the Privy Council judgement, amendments were made to local authority Ordinances, especially to the sections which dealt with the dissolution of local authorities. Hence, in 1977 section 277(1) of the Municipal Councils Ordinance No. 29 of 1947 was amended by the Local Authorities Elections (Special Provisions) Law, No. 24 of 1977. According to the amended provisions:

"The Minister shall before making an order under sub-section 1 appoint for the purpose of satisfying himself in regard to any of the matters referred to in sub-section 1, a retired judicial officer to inquire into and report upon such matter within a period of three months and the person so appointed shall in relation to such inquiry have the powers of a Commissioner of Inquiry appointed under the Commission of Inquiry Act."³¹

Thus, the amendment to section 277(1) of the Municipal Councils Ordinance was made due to the decision taken by the Privy Council in Durayappa v Fernando and this episode itself clearly demonstrates the important role that the courts could play with regard to central-local relations.

However, according to the Sri Lankan experience, with regard to the role of the judiciary, two important factors could be identified. On the one hand, in recent times there has been a tendency for a wider application

30. op.cit., note (24) p. 270

31. Local Authority Elections (Special Provisions) Law, No. 24 of 1977.

of the doctrine of ultra vires with regard to local authority decisions and, on the other hand, compared with the English system, it is clear that there are weaknesses and inadequacies in the process of judicial review in Sri Lanka. An analysis of the applicability of the doctrine of ultra vires and the process of judicial review in Sri Lanka is essential to demonstrate these aspects of the judiciary. At the outset, the doctrine of ultra vires will be discussed with a general introduction followed by an analysis of the applicability of this doctrine and its weaknesses with regard to the role of the judiciary in central-local relations.

III. The doctrine of ultra vires

The Redcliffe-Maud Committee in its report stated:

"Local authorities are dependent on Parliament for the basic legal powers to tax; that is to raise money by the rates and to interfere with individual and public rights. In this country their freedom is limited by the doctrine of ultra vires; in that they must be able to point to statutory sanction in general enabling legislation in special legislation or in private acts for every action taken by them. It is not sufficient that a course of action should seem to a local authority to be in the public interest; it cannot embark on it without the authority of Act of Parliament."³²

This reveals that the local authorities are liable to directions of special statutory authority for their each and every act, through the application of the doctrine of ultra vires, and that at any time the doctrine of ultra vires may be invoked against the local authority.³³

32. Report of the Redcliffe-Maud Committee, pp. 69-70.

33. ibid.

Accordingly, it could be argued that, the constructionists of the statute are the courts; therefore the courts will on occasion be able to prohibit certain local action or provide redress to those who claim to have been affected by ultra vires decisions.³⁴

The applicability of the doctrine of ultra vires in England as well as in Sri Lanka dates from the nineteenth century. In England the doctrine has been prominently mentioned in Colman v Eastern Counties Railway Company³⁵ in 1840 and in East Anglian Railway Company v Eastern Counties Railway Company³⁶ in 1851. The English case law which was in a confusion with regard to this principle was settled by the House of Lords decision in Ashbury Railway Carriage and Iron Company v Riche³⁷. It was held in this case that where there is an Act of Parliament creating a corporation for a particular purpose and giving it powers for that purpose, what it does not expressly or impliedly authorise is to be taken to be prohibited. Furthermore, this jurisdiction was extended to local authorities. For instance, in London County Council v Attorney General³⁸ it was held that municipal corporations could not carry out objects not authorised by the Municipal Corporations Act, 1882. The doctrine of ultra vires was applicable to consider the validity of an action taken by a local authority in Ceylon in 1882.³⁹ Consequently, it is apparent that the doctrine of ultra vires has been applicable for a long period in England as well as in Sri Lanka. Although the principles according to which the courts are prepared to apply the doctrine of

34. Michael Elliott, *op.cit.*, p. 63

35. 10 Beav. 1. 16, 16 L.J. Ch., 73

36. 11 C.B. 775, 21 L.J. Ch. 23

37. (1875) 7 H.L. 653

38. [1902] A.C. 165

39. Gunawardene v Manikkunambi (1882) 5 S.C.C. 22

ultra vires and review the exercise of the administrative, judicial or legislative acts of an administrative agency may be classified into number of categories, attention of this discussion will be focussed mainly with regard to the principles of substantial and procedural ultra vires, as these demonstrate the recent tendency in widening the approach of the doctrine of ultra vires. Hence, at the outset, it is intended to analyse the applicability of the doctrine of ultra vires on substantial grounds followed by an examination of procedural ultra vires.

1. Application of the doctrine of ultra vires: substantive ultra vires

Commensurate with the doctrine of ultra vires, a piece of delegated legislation will be struck down because it infringes the parent Act or some other primary statute. Accordingly, although the local authorities are empowered to make (or when made to revoke or amend) by-laws it could be said that, if the Councils purport to legislate outside the purview of their proper authority then the by-laws will consequently lack validity. For example, Professor Pieris's discussion of the doctrine of ultra vires in Sri Lanka states:

"One of the primary aims of administrative law is to ensure that administrative officials and tribunals act within the scope of their authority. If they act without authority or outside the ambit of their authority a citizen whose rights are impaired may seek a remedy in the courts. The doctrine relating to ultra vires however, has a larger application, in that it seeks also to control the activities of bodies

invested with subordinate powers of law making. For example, a local authority which is given power under a Parliamentary statute to make by-laws in respect of certain matters and within certain limits, may purport to legislate outside the purview of its proper authority. In these circumstances, the local authority acts in excess of its vires or authority and its acts consequently lack validity".⁴⁰

Moreover, in England the celebrated judgement of Lord Russell, C.J., in Kruse v Johnson⁴¹, clearly sets down the law that in no way are the courts relieved from the responsibility in questioning the validity of by-laws when they are brought into court.⁴² In Kruse v Johnson, the Kent County Council claiming to act under their statutory powers made the following by-law:

"No person shall sound or play upon any musical or noisy instrument or sing in any public place or highway within fifty yards of any dwelling-house after being required by any constable, or by an inmate of such house personally, or by his or her servant to desist."⁴³

In this case it was proved that the appellant had violated this by-law by singing hymns within fifty yards of a dwelling house without taking any notice when requested to desist. On behalf of the appellant it was contended that the by-law was invalid on the ground that it was unreasonable. Lord Russell of Killowen, C.J., in a judgement of the Divisional Court, held that the by-law was valid. With regard to this decision, Lord Russell, C.J., pointed out:

"Section 16 of the Local Government Act 1888 that a County Council shall have the same power of making by-laws in relation to their county as the Council of a borough have in relation to

40. Professor G.L. Piëris, Essays on Administrative Law, Lake House Investments, 1980, p. 311

41. [1898] 2 Q.B. 91

42. ibid., at p. 98

43. ibid., at p. 92.

their borough What are the checks or safeguards under which this very wide authority of making by-laws is exerciseable. The same section 23 further provides that no by-law can be made unless two-thirds of the whole number of the Council are present, and when so made, it shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall; and it shall not come into force until the expiration of forty days after a copy sealed with the corporate seal has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of her Privy Council disallows a proposed by-law or part thereof, such by-law or such part, shall not come into force, and the Queen may within the forty days enlarge the time within which the by-law shall not come into force."⁴⁴

Furthermore, Lord Russell, C.J., stated that, although Parliament had thought fit to delegate to representative public bodies in town and cities and also in the counties the power of exercising their own judgement as to what are the by-laws which to them seem proper to be made for good rule and Government in their own localities, that power is accompanied by certain safeguards.⁴⁵ As, for example, Lord Russell, C.J., pointed out that there must be antecedent publication of the by-law with a view of eliciting the public opinion of the locality upon it and that such by-laws will not have force until after they have been forwarded to the Secretary of State. Firstly, the Queen with the advice of her Privy Council, may disallow the by-law wholly or in part and may enlarge the suspensory period before it comes into operation.⁴⁶ Moreover, Lord Russell, C.J., after discussing all these safeguards, stated:

44. *ibid.*, pp. 97-98

45. *ibid.*, p. 98

46. *ibid.*

"I agree that the presence of these safeguards in no way relieves the court of the responsibility of inquiring into the validity of by-laws where they are brought in question or in any way affects the authority of the court in the determination of their validity or invalidity."⁴⁷

However, the attitude of the Sri Lankan courts with regard to the questioning of the validity of local authority by-laws emphasises the fact that the approach of the courts has diversified from a narrow sense of applicability to a wider approach.

According to the Municipal Councils Ordinance:⁴⁸

"Every Municipal Council may from time to time make and when made may revoke or amend such by-laws as may appear necessary for the purpose of carrying out the principles and provisions of this Ordinance."⁴⁹

The Urban Councils, Town Councils, Village Councils and Development Councils also have the similar powers according to the relevant statutes.⁵⁰ Similar to English experience even in Sri Lanka, the local authorities are to follow the procedure set down in the respective Ordinances, for the purpose of making by-laws. Correspondingly, the Municipal Councils Ordinance,⁵¹ provides:

"No by-law shall have effect until it has been approved by the Minister, confirmed by the Senate

47. *ibid.*

48. Municipal Councils Ordinance, No. 29 of 1947

49. *ibid.*, section 267

50. Urban Councils Ordinance, section 153(1), Town Councils Ordinance, section 152(1), Village Councils Ordinance, section 42, Development Councils Act, section 69.

51. Municipal Councils Ordinance, No. 29 of 1947.

and the House of Representatives and notification of such confirmation is published in the Gazette. Every by-law shall upon the notification of such confirmation be as valid, and effectual, as if it were herein enacted."⁵²

However, there are no provisions in any of the Municipal, Urban, Town and Village Councils Ordinances and in the Development Councils Act regarding the powers of the courts to question the validity of a local authority by-law.⁵³ Hence, most of the early Sri Lankan decisions, were of the erroneous opinion that it was not competent to a court to entertain the question of the validity of a by-law. This fact was taken into consideration and was confirmed in Sourjah v Hadjiar⁵⁴, when the question of the validity of a by-law came before the courts. Lascelles, C.J., held that it was not competent for a court to entertain the question of the validity of a by-law after it had been passed with the formalities required by section 109 of the Municipal Councils Ordinance of 1910.⁵⁵ Accordingly, Lascelles, C.J., said:

"Several grounds were taken in the appeal against the conviction of the accused. The first, which was principally pressed was that the by-law was ultra vires. It was an objection that might perhaps have had some force if the matter had not been disposed of in principle by a previous decision of the court in La Brooy v Marikar.⁵⁶ It was there held that it was not competent to a court to entertain the question of the validity of a by-law after it had been passed with the formalities required by section 109 of the Municipal Councils Ordinance of 1910. By that section it is provided that after the by laws have been approved of by the Governor in

52. ibid. sections 268(1) and (2)

53. Municipal Councils Ordinance, sections 267-276, Urban Councils Ordinance, sections 153-158, Town Councils Ordinance, sections 152-156, Village Councils Ordinance, section 42-44, Development Councils Act, sections 69-70

54. (1914) 18 N.L.R. 31

55. ibid.

56. [1907] 2 A.C.R. 63.

Executive Council they are as legally valid, effectual and binding as if⁵⁷ they had been enacted in the Ordinance."

The decision of La Brooy v Marikar, in which it was decided that the courts have no power to question the validity of a local authority by-law, had followed the judgement in The Chartered Institute of Patent Agents Ltd. v Lockwood⁵⁸. In this case the House of Lords was called upon to construe sub-section 4 and 5 of section 101 of the Patents, Designs and Trade Marks Act, 1883, which provided that any rules made by the Board of Trade in pursuance of that section should be laid before both Houses of Parliament, and that if either House within the next forty days resolved that such rules or any of them ought to be annulled the same should after the date of such resolution be of no effect. The House of Lords held that the validity of by-laws that had passed through the process prescribed in this provision could not be questioned. However, in Lockwoods case the arguments were based mainly on the question whether the provision of a statute which stated that the regulations approved shall be as valid and effectual as though it were herein enacted could be scrutinized by the courts. Lord Herschel in Lockwood's case observed:

"They are to be of the same effect as if they were contained in this Act. My Lords, I have asked in vain for any explanation of the meaning of those words or any suggestion as to the effect to be given to them if, notwithstanding that provision, the rules are open to review and consideration by the courts I feel that I am in very

57.op.cit.,note (54)

58.[1894] A.C. 347.

great difficulty in giving to this provision that they "shall be of the same effect as if they were contained in this Act," any other meaning than this that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act. No doubt there might be some conflict between a rule and a provision of the Act.

.Well there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case, probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it."⁵⁹

However, this strong expression by Lord Herschel, gives such words in the Act their literal meaning and endeavours to reconcile any inconsistency between regulation and the parent Act on the basis of a conflict which must be resolved of the parent Act - a notion quite apart from the notion of ultra vires.⁶⁰

Lord Herschel's view in this case was shared by Lord Watson and Lord Russell of Killowen. Lord Morris, however, differed strongly from the majority view. According to Lord Morris:

"I am of opinion that it is not alone competent for the Courts of Justice to consider, but that it is their duty to consider whether the rules are ultra vires."⁶¹

A number of decisions besides Sourjah v Hadjiar and La Brooy v Marikar had followed the decision of the Institute of Patents Agents Ltd. v Lockwood. In a series

59. ibid., pp. 359-360

60. Professor G.L. Pieris, op.cit., p. 342

61. Institute of Patents Agents Ltd. v Lockwood, [1894] A.C. 347.

of early cases⁶², the decision was that a by-law is valid and effectual if in terms of sub-section 4 of section 109 of the Municipal Councils Ordinance, 1910 it was laid before the Legislative Council and not annulled by it. In Seyappa Chetty v Municipal Council, Kandy⁶³, Perera, J., in deciding that a by-law giving power to the Chairman of the Municipal Council of Kandy, when default was made by a householder in the payment of any money due for the water supplied, to turn off the supply of water is not ultra vires, has stated that, "this court has held that the validity of by-laws that have passed through the process prescribed in sub-section 4 of section 109 cannot be questioned."⁶⁴

The decision in Nicholas v Happawana Terunanse⁶⁵, an early case decided in 1897, was the first to take a wider approach as to the power of the courts in questioning the validity of local authority by-laws, although this was not followed by later cases until 1951. Hence, it must be noted that even in this case no principles governing the ability of the courts to question the by-laws of local authorities were discussed. In this case the question was the validity of a by-law of the Galle Municipal Council, which was in the following terms:

"If any fruit tree or any part of a tree within the limits of the municipality be deemed by the Council to be likely to fall upon any house or building or to endanger the occupiers thereof, or if the same may be near any road or street and likely to effect the safety of passengers going along or using such road or street it shall be lawful for the Municipal

62. La Brooy v Ismail 1 C.L.R. 9, Colombo Municipal Council v Uduma Lebbe 1 A.C.R. 38, Muturaman v Municipal Council, Kandy C.L.R. 49, Seyappa Chetty v Municipal Council, Kandy (1913) 17 N.L.R. 195

63. (1913) 17 N.L.R. 195

64. ibid.

65. (1897) 2 N.L.R. 346.

Council to cause notice in writing to be given to the occupier of the ground upon which the tree stands to remove the said fruit, limb or tree and if such owner or occupier do not begin to take down the same within twenty-four hours after such notice and complete the work with due diligence the Council shall cause the work to be done."⁶⁶

In this case the accused was found guilty of obstructing two officers of the municipality while they were engaged in their duty under the authority of the above by-law. The two officers had come to cut down a coconut tree which grew on his premises and which threatened to fall on a house in the next garden. The two lands were private premises over which the public had no right of way. In deciding that a by-law authorising the Municipal Council to cut down trees overhanging, and likely to prove dangerous to, private property is ultra vires and that a person who resists a municipal officer in the execution of such a by-law is therefore not liable to conviction, Withers, J., stated:

"There is always a clear line between what concerns individuals and what concerns the public. The Ordinance sanctions the entrance on private grounds of municipal officers, but in every case with the object of conserving the public good or preventing harm of any sort from affecting the public. If the municipality step into prevent my tree falling on my neighbour's house in the next garden it may step into prevent my own tree falling on my house or to prevent some accident to myself from the ruinous condition of my own home. legislature aimed to protect one person from the consequence of what may be a nuisance on the part of his neighbour, but which does not affect or concern the general public in the least degree was not intended, I imagine by the Municipal Councils Ordinance. The person who is threatened by his neighbours overhanging tree has a simple remedy in his own hands. Hence, in my opinion that part of the by-law in question which results to overhanging trees in purely private places is invalid."⁶⁷

66. By-law No. 2 of Chapter XXIV of the Galle municipality

67. (1897) 2 N.L.R. 346, at p. 347.

Some years later, in 1951, in Gunasekera v The Municipal Revenue Inspector⁶⁸, it was held obiter, that a by-law purporting to have been passed by a local authority and approved and confirmed under section 268 of the Municipal Councils Ordinance can nevertheless, be held by a court to be ultra vires if it was passed in excess of the authority of the local authority.⁶⁹ In this case Gratiaen, J., made a comment with reference to the provisions of section 268, which emphasised the fact that the Sri Lankan courts were gradually following a wider approach in questioning the validity of local authority by-laws. According to Gratiaen, J.,:

"It does not seem to me that the provisions of section 268 (2) are wide enough to withdraw altogether the jurisdiction of a court to declare ultra vires a by-law which has been passed in excess of the authority of a local authority. Section 268(2) certainly introduces an additional safeguard by postponing the operation of a by-law until it has been approved by the appropriate Minister and confirmed by Parliament. But the co-existence of Parliamentary and judicial control of delegated legislation are not incongruous. According to section 268(2) the notification of such approval and confirmation gives validity to the by-law only if it has in the first instance been passed intra vires the local authority and not otherwise. A by-law that is from its inception ultra vires cannot thereafter obtain what has been described as the "high water-mark of inviolability" which attaches to a Parliamentary enactment. If it were intended that the mere confirmation however, perfunctory, of a by-law passed in excess of a Councils authority should thereby convert it into something possessing the force of inviolable law, the withdrawal of the jurisdiction of the courts could have been expressed in less uncertain terms."⁷⁰

The comments of Gratiaen, J., in Gunasekera v Municipal Revenue Inspector, although obiter, could be

68.(1951) 53 N.L.R. 229

69.ibid.

70.ibid., at p.234.

regarded as a land mark in respect of the role of the courts in central-local relations. Since the decision of Gunasekera v The Municipal Revenue Inspector the courts have been inclined to adopt the wider approach as to their ability to question the validity of local authority by-laws. For instance, in Fernando v Ratnayake,⁷¹ De Kretser, J., stated:

"In my opinion the comments of Gratiaen, J., which were obiter in Gunasekera v The Municipal Revenue Inspector, clearly state what I think is the true legal position in reference to by-laws vis-a-vis the provisions of section 268. It is therefore open to me to consider whether or not that position of by-law 47 which relates to overhanging trees in purely private places is invalid. It appears to me that this position of by-law 47 is invalid."⁷²

In this case the question arose again whether by-law 47 of the Colombo Municipal Council, which authorises the Colombo municipality to cut down trees overhanging and likely to prove dangerous to private premises, was ultra vires. The by-law provides:

"When any tree or branch or fruit of a tree within the limits of the municipality shall be deemed by the Chairman to be likely to fall upon any house or building and injure the occupiers thereof or whenever the same shall overhang any street; it shall be lawful for the municipality to cut down the said tree or branch."⁷³

In this case, according to the evidence given, the tree that the accused was required to remove stood on the boundary of her premises and leaned into the adjoining garden where there was a house. The officer who gave evidence said that the tree leaned at an angle of

71. (1973) 75 N.L.R. 543

72. ibid., p. 546

73. ibid.

about forty-five degrees and in his opinion the roots were weak and the tree threatened to fall on the adjoining house if there was a heavy wind. It was held in this case, the by-law 47 of the Colombo Municipal Council, which authorised the Municipal Council to cut down trees overhanging, and likely to prove dangerous to, purely private premises is ultra vires.

Accordingly, it is conspicuous that, although the Municipal, Urban, Town and Village Councils Ordinances and the Development Councils Act empower the local authorities to make by-laws from time to time and, when made, to revoke them, yet the courts have the power to control the local authority by-laws by means of examining their validity and, if the local authorities have exceeded their powers then to invalidate the by-laws. This emphasises the fact that the courts have the ultimate authority to confirm the validity of a local authority by-law. However, according to the English experience, it is clear that certain facts are taken into consideration in this respect. Especially, with regard to the decision in Kruse v Johnson⁷⁴, a court may invalidate a by-law on the ground of unreasonableness. According to Lord Russell, C.J.,

" . . . When the court is called upon to consider the by-laws of public representative bodies clothed with the ample authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such by-laws ought to be approached from a different stand point. They ought to be supported if possible. They ought to be as has been said "benevolently " interpreted,

74. [1898] 2 Q.B. 91.

and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But further looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation and to the nature and extent of the authority given to deal with matters which concern them and in the manner which to them shall seem; I think courts of justice ought to be slow to condemn as invalid any by-law; so made under such conditions, on the ground of supposed unreasonableness."⁷⁵

This signifies the fact that the courts have no unlimited powers to examine the validity of local authority by-laws. Hence, it is clear that this enables the judiciary to take a reasonable opinion of a by-law in question. In Sri Lanka, however, there have been no instances where a local authority by-law has been invalidated or even questioned on the ground of unreasonableness. However, as has been discussed already, the courts may invalidate and question local authority by-laws on the ground that the local authorities have acted beyond their power in making the respective by-laws. Nevertheless, it is clear that the powers of the judiciary in controlling the local authorities by means of questioning the validity of their by-laws have expanded during recent times. This fact is significant, not only with regard to the rules under the doctrine of substantive ultra vires, but also with regard to procedural ultra vires, to which we now turn.

2. The application of the doctrine of ultra vires: Procedural ultra vires

As discussed already, it is clear that the

75. ibid., at p. 99.

local authorities have no power to purport to legislate outside the scope of their proper authority. Similarly, the local authorities also have no power to carry out the duties in a manner different from that which the legislation has prescribed. According to Sir Ivor Jennings:

"An act of a local authority may be ultra vires not only if it does not belong to the class of acts which the local authority is empowered to do, but also if it is done in a manner different from that prescribed by the legislation in question."⁷⁶

This emphasises the fact that the local authorities will have to comply with the rules laid down by the legislation so that their acts be intra vires. Thus, it could be argued that by means of these limitations of power, local authority functions are kept under control.

However, with regard to the attitude of the courts in this respect, it could be said that, according to the Sri Lankan experience until recent times, the courts have been very reluctant to decide that a local authority action is ultra vires even if it has not followed the procedure laid down in the expected Ordinance. On the other hand, the case law remains silent with regard to instances where the local authorities have exercised their powers in an erroneous form. A comparative analysis of the English and the past and present Sri Lankan experience is essential at this juncture, as this will demonstrate, on the one hand, the inadequacies and weaknesses and the narrow approach of the Supreme Court and, on the other hand, the present trend in widening the application of the doctrine of

76. Sir Ivor Jennings, Principles of local government law, second edition, University of London Press, 1939, p. 140.

ultra vires.

A comparative study of the application of the doctrine of ultra vires in England and in Sri Lanka reveals that in Sri Lanka the application of this doctrine has been very limited. According to the English experience, it is clear that the doctrine of procedural ultra vires has been applicable on numerous occasions to quash local authority decisions. Thus, in England the decisions of local authorities in connection with the rents to be charged for flats,⁷⁷ or taking action for slum clearance⁷⁸ or compulsory purchase orders⁷⁹ have been held to be void because the local authority had not initially followed the correct procedure laid down by the respective statute. However, according to an analysis of the local authority case law in connection with the application of the procedural ultra vires it is significant that in Sri Lanka this principle has been applied mostly to discuss the validity of local authority contracts. Moreover, prior to 1967 the courts were of the erroneous opinion that the local authority contracts were valid although they have not complied with the necessary requirements. Under the Municipal Councils Ordinance in Sri Lanka:

"The Commissioner may on behalf of the Council enter into any contract for the execution or performance of any work or service or for the supply of any articles or materials, involving an estimated expenditure of not more than one thousand five hundred rupees, if the contract will not or is not expected to endure for more

77. R v Paddington and St. Marylebone Rent Tribunal, Ex-parte Bell, [1949] 1 A.E.R. 720, R v Barnet and Camden Rent Tribunal, Ex-parte Frey Investments Ltd. [1972] 1 A.E.R. 1185

78. Rayner v Stephney Corporation [1911] 2 Ch.312.

79. Burgess v Jarvis and Seven Oaks U.D.C. [1952] 1 A.E.R. 592.

than one year and the necessary funds have been provided for the same in a sanctioned budget or by supplementary budget."⁸⁰

Nonetheless, the Ordinance further states:

"Any contract for the execution or performance of any work or service or for the supply of any article or materials for a Municipal Council which involves an estimated expenditure of more than one thousand five hundred rupees, or which will or is expected to endure for more than one year, shall if entered into in Ceylon, be reduced to writing, and signed by the Mayor and the Commissioner on behalf of the Council, and, in addition to such other matters as may be deemed necessary for inclusion in any such contract, shall specify-

- a. the work or services to be executed or performed or the articles or materials to be supplied;
- b. the price or rate to be paid for the work, service, articles or materials;
- c. the time or times within which the work or service is to be completed or the articles or materials are to be supplied; and
- d. any penalty or penalties to be imposed in case of breach."⁸¹

Thus, it is apparent that if the contract is for over one thousand five hundred rupees, it is essential that the contract should be in writing and be duly signed for the agreement to be effective. However, in S.H. Peris and another v The Municipal Council, Galle⁸² it was held on appeal that, in construing the provision of sections 227, 228 and 229 of the Municipal Councils Ordinance, there is nothing to suggest that contracts not under seal involving sums over Rupees 1,500/= are illegal. In this case, a firm of architects were engaged by the defendants, to construct a building. The contract, although it involved an estimated expenditure of more than Rupees 1,500/=, was not contained in an instrument under the seal of the Council as required by the provisions

80. Municipal Councils Ordinance, section 227

81. *ibid.*, section 228

82. (1963) 65 N.L.R. 555.

of section 228 of the Municipal Councils Ordinance. The plaintiffs, however, performed their part of the contract and handed over the building to the defendant. They sought in the present action to recover the sum of rupees 30,380/40, which they claimed was the unpaid balance, out of a sum of Rupees 84,380/40 due to them as remuneration for the work done by them as architects. The trial judge dismissed the action on the ground that the contract was void as it was not under seal. Under these circumstances, it is clear that the contract between the firm of architects and the Municipal Council was void, as the agreement was not properly construed according to the requirements of the Municipal Councils Ordinance, precisely, the section 228. Under these circumstances it is obvious that a contract which was made contrary to the procedure laid down in the statute cannot be valid. Hence, it is clear that the contract between the two parties was ultra vires the Municipal Councils Ordinance and on these points, the decision of Tambiah and Abeyasundere, JJ., on appeal could be criticised. Moreover, this decision signifies the narrow approach of the courts with regard to the application of the doctrine of ultra vires.

However, the decision of H.N.G. Fernando, C.J., in Municipal Council of Jaffna v Dodwell and Company⁸³, which came within the course of four years after the decision in Peris v The Municipal Council, Galle, signifies on one hand, the narrow and incorrect approach of Tambiah and Abeyasundere, JJ., in applying the principles of the doctrine of procedural

83.(1967) 74 N.L.R.25.

ultra vires and, on the other hand, the present trend in extending the application of this doctrine.

In Municipal Council of Jaffna v Dodwell and Company an action was brought for the recovery of a sum of Rupees 13,935/50, alleged to be the price of goods sold and delivered upon certain contracts of sale; the defendants, Jaffna Municipal Council, pleaded that the alleged contracts were void and/or unenforceable because they did not comply with the requirements of sections 228 and 229 of the Municipal Councils Ordinance, in that they were not embodied in writing and were not duly signed, sealed or sanctioned. In his judgement, H.N.G. Fernando, C.J., with Alles, J., agreeing stated:

"I must add that I do not concur in the opinion which perhaps influenced the decision in Peris v Municipal Council, Galle, namely that it could be travesty of justice to deny some relief to a plaintiff whose claim against a Municipal Council is based on a contract not under seal. The requirements of the seal being one imposed by Statute, a person who acts on the faith of such a contract has only himself to blame for ignoring the law."⁸⁴

IV. Judicial review

As has been pointed out already, it is clear that the doctrine of ultra vires is the basis of the role of the judiciary in central-local relations. Hence, when a local authority acts outside the authority given by the Statute which created the Council, an action certainly lies against the respective Council.⁸⁵ On such an occasion

84. ibid., p. 33

85. Suriyawansa v The Local Government Service Commission (1947) 48 N.L.R. 423.

the courts, in applying the supervisory jurisdiction which they have over certain acts of local authorities⁸⁶, may grant the Orders of certiorari, mandamus, prohibition and quo warranto and may issue injunctions in relation to acts or proposed acts which are ultra vires or otherwise contrary to law.⁸⁷ Thus, it could be argued that the ~~orders~~ writs are playing a significant role in connection with the doctrine of ultra vires as Orders are the method by which the courts could decide whether the local authority has acted ultra vires the statutory provisions or not. According to Michael Elliott:

"Local government is granted powers by Statute. It may only perform those functions that the Statutes sanction. The arbiters of competing views on the meaning of the Statute are the courts and the prerogative writs are the method by which they decide whether local authority has acted ultra vires its statutory power or not."⁸⁸

In Sri Lanka, according to the Courts Ordinance of 1889, the courts have the power to grant and issue mandates in the nature of writs of certiorari, mandamus, prohibition, injunction and quo warranto,⁸⁹ and these writs have been issued by the courts against the local authority decisions. Mostly these writs have been used either to quash the decisions of local authorities or to question the validity of an election or an appointment of a councillor. Comparatively, an examination of the application of these writs specify that the percentage of the application of writs of mandamus and quo warranto to

86. Cross, op.cit., p.180

87. ibid.

88. Michael Elliott, op.cit., pp.64-65

89. Courts Ordinance, section 46.

question the validity of local authority decisions is higher than the application of the writs of prohibition, certiorari and injunction. The writ of mandamus has been issued to restore persons to their office⁹⁰, to get their names inserted in qualifying lists,⁹¹ to hold fresh elections to Urban Council divisions⁹², or to hold special meetings of the Council in terms of section 39(2) of the Town Councils Ordinance.⁹³ There are instances where mandamus has been issued against the Chairman of an Urban Council who, by an improper exercise of the discretion vested in him, ruled a motion out of order.⁹⁴ Also the writ has been available to order Village Councils to renew licences for trading⁹⁵ and to direct the Chairman to entertain an application for the issue of a licence.⁹⁶ This has extended even up to the extent of authorising local authorities to pay money which is due to the Local Government Service Commission.⁹⁷ On the other hand the writ of quo warranto has been mostly issued to question the validity of local authority elections. There are instances where the judiciary has nullified the appointment of the Chairman⁹⁸ and members⁹⁹ of local authorities, and also has

90. Wijesinghe v The Mayor of the Colombo Municipal Council, (1948) 50 N.L.R. 87

91. Albert Peiris v Gunaratne (1946) 47 N.L.R. 49

92. In the matter of an application for a writ of mandamus on the G.A., Western Province to hold a fresh election for division 1, Kalubowila East of the Dehiwala-Mt. Lavinia Urban Council, (1945) 46 N.L.R. 237

93. Seenivasagam v Kiripamoorthy (1954) 56 N.L.R. 450, Samaraweera v Balasuriya (1955) 58 N.L.R. 118

94. Wijesinghe v Chairman, Panadura Urban Council (1959) 64 N.L.R. 180

95. Noordeen v Chairman, Godapitiya Village Council (1943) 44 N.L.R. 294

96. Abdul Majeed v J.B. Rajapakse (1953) 54 N.L.R. 55

97. L.G.S.C. v Urban Council, Panadura (1952) 55 N.L.R. 429

98. Marikar v Punchihewa (1938) 39 N.L.R. 412

99. Piyadasa v Gunasinghe (1941) 43 N.L.R. 36, Gunasekera v Wijesinghe (1963) 65 N.L.R. 303.

set aside the election to a ward of a local authority.¹ In fact the courts even interfered with the rights of the member of a local authority to sit and vote at meetings.² However, the writs of certiorari and prohibition have been used very rarely to question the validity of actions taken by the local authorities. On the other hand, the courts have issued injunctions against local authorities. In Gnamuttu v Chairman, Urban Council, Bandarawela,³ the Supreme Court issued an injunction against the Council restraining it from interfering with or disconnecting the petitioner's water supply. Also in Jayawardene v The Urban Council, Ja Ela⁴ an injunction was issued to restrain the local authority from seizing and selling the plaintiff's property in lieu of unpaid taxes and rates.

Nonetheless, a detailed analysis of the application of these Orders, emphasises two important features which are worthy to note. Firstly, a study of the case law has aroused a question as to whether there is a difference in the attitude of the courts in questioning a decision of the Minister of Local Government taken in connection with local authorities? Secondly, it is apparent that there are inadequacies and weaknesses in the process of judicial review. Hence, it is necessary to examine these two factors, before we come to a conclusion with regard to the role of the judiciary in central-local relations.

1. Piyadasa v De Silva (1951) 53 N.L.R. 46, Fernando v Gunasekere, (1946) 47 N.L.R. 512
2. Fonseka v Sellathurai (1951) 54 N.L.R. 486, Podi Singho v A.E. Gunasinghe (1948) 49 N.L.R. 300
3. (1942) 43 N.L.R. 366
4. (1976) 79(1) N.L.R. 130.

1.The attitude of the courts towards a decision of the
Minister:Durayappa v Fernando

The Privy Council decision in Durayappa v Fernando raises the question whether the court is disinclined to quash an unlawful governmental decision or an act. In Durayappa's case, when the Jaffna Municipal Council was dissolved by the Minister of Local Government this order was challenged by the appellant, who was the Mayor of the Council prior to the dissolution. The decision of their Lordships was that under the circumstances of the case the Minister should have observed the principle audi alteram partem.⁵ However, during the hearing of the appeal their Lordships raised the question which was not taken in the court below, whether the appellant was entitled to maintain this action and appeal.⁶ Furthermore, to decide this question it was said that the "answer must depend essentially upon whether the order of the Minister was a complete nullity or whether it was an order voidable only at the election of the Council."⁷ Out of these two issues it is essential especially, to analyse the first question, which was raised with regard to locus standi, which has received much attention in English Law during recent times. This analysis will thus enable us not only to examine the correctness of the decision of the Privy Council in Durayappa v Fernando, but also to understand the attitude of the

5.Durayappa v Fernando, op.cit., p.272

6.ibid.

7.ibid.

courts in relation to local authority activities in this context.

i. The question of locus standi

The law with regard to locus standi could be examined both prior to and after the recent reforms in Administrative Law remedies in England in 1978. It is essential to analyse the historical perspective at least summarily, in this respect, firstly, as the case in question- Durayappa v Fernando - came before the Privy Council well before 1978 and secondly, as this will facilitate a proper understanding of the present position and, essentially, the reforms that should be introduced in Sri Lanka in this respect. The analysis will be limited to the principles of locus standi in applying for a writ of certiorari as it is our main concern.

Prior to 1978, there were two views with regard to the standing requirements for certiorari.⁸ The first view was that certiorari had no standing limits as such and that any person could apply for it. This view was supported by a nineteenth century decision by Blackburn, J. Formulating this primary rule of certiorari, Blackburn, J., stated:

"Anybody can apply for it; a member of the public who has been inconvenienced or a particular party or person who has a particular grievance of his own. If the application is made by . . . a

8. P. P. Craig, Administrative Law, London, Sweet and Maxwell, 1983, p. 419.

stranger, the remedy is purely discretionary."⁹

"In other words" says H.W.R.Wade, "certiorari is not confined by a narrow conception of locus standi. It contains an element of the actio popularis. This is because it looks beyond the personal rights of the applicant and it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers."¹⁰

Moreover, it is apparent that, according to the rules of natural justice, even third parties may apply for certiorari as a remedial measure. Taking English authorities as examples it could be pointed out that on various occasions rate-payers¹¹, an opponent in litigation¹², a trade rival¹³, or a person whose interests are affected by what has happened¹⁴, have been successful in applying for certiorari and then as "aggrieved persons."

Furthermore, according to a judgement of Denning, L.J., (as he then was), in 1955, it is clear that even a stranger has the locus standi to apply for a writ of certiorari, if the court is satisfied that public interest demands his intervention. Consequently, in R v Thames Magistrates Court, Ex-parte Greenbarum¹⁵, Denning, L.J., set out the following test:

"the reviewing court could interfere at the instance not only of a person aggrieved but, also a stranger if it thinks proper. If the application is made by a person

9. R v The Justices of Surrey (1870) L.R., (1870) 5 Q.B. 466, 473

10. H.W.R.Wade, Unlawful administrative action, L.Q.R., Volume 83, p. 503

11. R v Paddington Valuation Officer, Ex-parte Peachey Property Corporation Ltd., [1966] 1 Q.B. 380

12. R v Henderson Rural District Council, Ex-parte Chorley, [1933] 1 K.B. 248

13. R v Richmond Confirming Authority, Ex-parte, Howitt [1921] 1 K.B. 248

14. Reg. v Thames Magistrates Court, Ex-parte Greenbarum (1957)

55 L.G.R. 129 (C.A.) A.G. of the Gambia v N'Jie [1961] A.C. 617 (P.C.)

15. (1957) 55 L.G.R. 129.

aggrieved, then the court will intervene ex debito justitiae, (in justice to the applicant), where the applicant is a stranger the court considers whether the public interest demands its intervention."¹⁶

Since the decision this principle has been adopted by several other authorities.¹⁷

The second view is that it is essential for an applicant to display some interest in the respective case, to fulfil the requirement of locus standi. Discussing this view, Craig states:

"This view is adopted by Thio, and some other writers for a number of reasons. One is that it is argued that R v Surrey Justices, the fons et origo of the first view, was itself based upon certain cases from prohibition, where the term "stranger" was used in a narrower sense, to connote a person who was not a party to the judicial proceeding, being impugned but, was nevertheless interested. A second reason is that a number of cases are said to cast doubt upon the ability of any person to utilise the remedy of certiorari, by judgements phrased in terms of a requirement of sufficient interest of a person aggrieved."¹⁸

With regard to these two opinions in connection with locus standi it could be said that the weight of authority appeared to be in favour of the former view.¹⁹ Before examining the Privy Council judgement in Durayappa v Fernando, in the light of this discussion, it is essential to analyse the present trend of development

16. ibid., p.131, P.P.Craig, op.cit., p.419

17. R v Butt, Ex-parte Brooke 1922 38 T.L.R. 537, R v Stafford Justices, Ex-parte Stafford Corporation [1940] 2 K.B. 33, R v Brighton Borough Justices, Ex-parte Jarvis, [1954] 1 W.L.R. 203

18. P.P.Craig, op.cit., p.420

19. ibid.

in English Law with regard to the principles of locus standi. The examinations by the Law Commission with regard to Administrative Law remedies could be mentioned as the most recent attempts in introducing tests to apply for the identification of the legal right of locus standi. In their first report²⁰, the Law Commission recommended that any person affected by a decision should possess locus standi.²¹ Subsequently, in their second report, they proposed that a person should possess standing when he has a sufficient interest in the matter to which the application relates.²²

This proposal by the Law Commission was adopted in Order 53, rule 3(5) and was incorporated in the Supreme Court Act, 1981. According to section 31(3) of the Supreme Court Act:

"No application for judicial review shall be made unless the leave of the High Court has been obtained with rules of Court; and the Court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."²³

In accordance to this provision, it is apparent that a person who has "a sufficient interest" could fulfil the requirements of locus standi or in other words has a good standing. However, to understand this new approach it is essential to analyse the case law in this respect.

20. Working Paper, No. 40 of 1970

21. *ibid.*, pp. 125-131

22. Report on the remedies in Administrative Law, Law Commission No. 73, Cmd. 6407, p. 22

23. Supreme Court Act, section 31(3).

This provision was discussed for the first time by the House of Lords, R v Inland Revenue Commissioners, Ex-parte National Federation of Self-Employed and Small Businesses Ltd,²⁴ and it is of interest to note the attitude of the courts in this context.

ii. The I.R.C. case

Casual labour was common on Fleet Street newspapers where the workers often adopted fictitious names and paid no tax. The consequent loss to the revenue was estimated at £1 million a year. Under these circumstances the Inland Revenue Commission made a deal with the relevant unions, employers and workers by which, if the casual workers would fill in tax returns for the previous two years, then the period prior to that was to be forgotten. A Federation representing the self-employed and small businesses, who contrasted the attitude taken by the revenue to the tax evasions of the Fleet Street casuals with that adopted by the revenue in other cases where tax evasions were suspected, applied ^{for} / judicial review under R.S.C Ord. 53, r.1, and claimed a declaration that the Inland Revenue acted unlawfully in granting the amnesty and an order of mandamus directed to the revenue to assess and collect income tax from the casual workers.

The Divisional Court granted leave, Ex-parte. However, at the hearing, on the Inland Revenue's objection that

24.[1982] A.C 617.

the Federation had no locus standi, the Divisional Court held that the Federation had no "sufficient interest" within R.S.C Ord. 53 r.3(5) to claim the declaration and order sought.

On the Federation's appeal, which proceeded on the assumption that the Inland Revenue had no powers to grant such a tax amnesty, the Court of Appeal allowed the appeal, holding that the body of taxpayers represented by the Federation could reasonably assert that they had a genuine grievance in the alleged failure of the Inland Revenue to do its duty and the granting of an unlawful tax indulgence to the casual workers and accordingly they had a "sufficient interest" within the meaning of R.S.C Ord. 53 r. 3(5) to apply for judicial review under that order. On appeal by the Inland Revenue it was held that it was unfortunate that the courts below had taken locus standi as a preliminary issue and that the appeal must be allowed, since, looking at the matter as a whole, the Divisional Court, although justified on the Ex-parte application in granting leave, ought at the hearing inter partes, to have found that the Federation had shown no "sufficient interest" in that matter.

It is of interest to note, especially the different attitudes of Lord Wilberforce and Lord Diplock with regard to the standing of the Federation of Self-Employed in this case. Lord Wilberforce, along with Lord Fraser of Tullybelton and Lord Ruskil, was of the opinion that the Federation had no sufficient interest in this context. He pointed out that there is a vast difference between a rate-payer and a tax-payer and, according to his view, a rate-payer has an interest direct and sufficient in the rates

levied from other ratepayers and for this reason he has a right to challenge assessments as a "person aggrieved".²⁵ However, in relation to taxpayers Lord Wilberforce was of the opinion:

"The structure of the legislation relating to income tax, on the other hand makes clear that no corresponding right is intended to be conferred upon taxpayers. Not only is there no express or implied provision in the legislation upon which such a right could be claimed, but, to allow it would be subversive of the whole system which involves that the Commissioner's duties are to the Crown and that matters relating to income tax are between the Commissioners and the tax payer concerned. No other person is given any right to make proposals about the tax payable by any individual; he cannot even inquire as to such tax. The total confidentiality of assessments and negotiations between individuals and the revenue is a vital element in the working of the system. As a matter of general principles I would hold that one taxpayer has no sufficient interest in asking the court to investigate the tax affairs of another taxpayer or to complain that the latter has been under-assessed or over-assessed: indeed there is a strong possible interest that he should not. And this principle applies equally to groups of taxpayers: an aggregate of individuals each of whom have no interest cannot of itself have an interest".²⁶

However, with due respect, it should be pointed out that if this opinion is to be taken as a reasonable test for locus standi, this would certainly create an unnecessary vacuum in the system of public law. However, on the other hand Lord Diplock was of the correct opinion that a taxpayer should have a right to bring the matters to the attention of the court. Further, he points out the necessity and the reasonableness in adopting a broader approach in relation to locus standi.

25. ibid. at pp. 632-633

26. ibid. p. 633.

"It would in my view be a grave lacuna in our system of public law if a pressure group, like the Federation or even a single public-spirited taxpayer were prevented by outdated technical rules of locus standi from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped. The Attorney General, although he occasionally applies for prerogative orders against public authorities that do not form part of Central Government, in practice never does so against the Government Departments. It is not in my view a sufficient answer to say that judicial review of the actions of officers or departments of Central Government is unnecessary, because they are accountable for Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do as far as regards efficiency and policy and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge".²⁷

It could be said that this novel approach, if followed, leaving aside the outdated technical rules of locus standi, could develop the process of judicial review.

However, the most noteworthy feature in this particular case was the impossibility in deciding the appropriate test in relation to locus standi, under section 31 of the Supreme Court Act. The position of the section 31 of the Supreme Court Act during the time this case was decided - although the matter is now largely of historical interest - is of value in this respect. At the time this case was decided the test for locus standi was still to be found in Order 53, rule 3(5). It was not incorporated in a Statute. This was vitally important, as Lord Denning, M.R., pointed out in O'Reilly v Mackman²⁸, the Rules of the Supreme Court could

²⁷. ibid. p. 644

²⁸. [1982] 2 A.C. 237.

only alter matters of procedure and not substance. According to Lord Denning, M.R.,:

"But now we have witnessed a break-through in our public law. It is done by section 31 of the Supreme Court Act, 1981, which came into force on January 1, 1982. This is to my mind, of much higher force than R.S.C. Order 53. That order came into force in 1977, but, it had to be construed in a limited sense because it could not affect the substance of the law. Rules of court can only affect procedure, whereas an Act of Parliament comes in like a lion. It can affect both procedure and substance alike".²⁹

Consequently, Craig correctly points out:

"If standing were to be regarded as substantive then no change could be effectuated through rule 3(5)".³⁰

However, it is difficult to come to a final decision with regard to the question of substance or procedure in the I.R.C case, as there were divergent responses to this question. While Lord Wilberforce³¹ appeared to take the view that locus standi was a substantive matter, Lord Diplock³² was of the opinion that it is procedural. On the other hand Lord Scarman³³ was ambiguous. Nevertheless, it could be said that at present the argument which arise in relation to the substance and procedure in locus standi is only an historical perspective, when considered in the light of the I.R.C case, as since 1981 the section 31 of the Supreme Court Act is effective. This has provided the opportunity to affect the / substance as well as the procedure. Moreover, it could be argued that there is a tendency of following the wider approach taken by Lord Diplock in I.R.C case. For instance, in O'Reilly v Mackman, Lord Denning, M.R., was of the opinion that a wider approach should

²⁹ ibid. p.238

³⁰ P.Craig, op.cit., p.438

³¹ 1982 A.C 617, at pp.630-631

³² ibid. p.638

³³ ibid. pp.647-648.

be adopted in deciding the question of standing. In his judgement , Lord Denning,M. R.,stated:

"Now that judicial review is available to give every kind of remedy, I think it should be the normal recourse in all cases of public law where a private person is challenging the conduct of a public authority or a public body, or of anyone acting in the exercise of a public duty. I am glad to see that in Reg.v Inland Revenue Commissioners,Ex-parte National Federation of Self-Employed and Small Buisenesses Ltd., Lord Diplock has endorsed the principle which I ventured to set out in Reg.v Greater London Council, Ex-parte Blackburn;

"I regard it as a matter of high constitutional principle that there is good ground for supposing that a Government Department or a public authority is transgressing the law, or is about to transgress it in a way which offends or injures thousands of Her Majesty's subjects, than any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced , and the courts in their discretion can grant whatever remedy is appropriate".³⁴

However, it must not be forgotten that the consolidation of this approach will depend on the decision of the future judges.

In the light of this decision we now turn to analyse the decision of Durayappa v Fernando.

According to the above discussion, it is significant to note that, the former Mayor of the Jaffna Municipal Council was a person "whose interests were affected by the Minister's decision" as well as an "aggrieved person with a particular grievance of his own". On this footing it could be argued that the Mayor was entitled to apply for the

³⁴.O'Reilly v Mackman [1982] A.C 237, at p.256.

writ of certiorari. Moreover, in accordance with the opinion of Blackburn, J, as to the standing requirements for certiorari, it is obvious that the Mayor of the Jaffna Municipal Council was ^{an} /agrieved person with sufficient standing. It is thus strange that the Judicial Committee held that the Mayor had no powers to question the validity of the Minister's decision to dissolve the local authority. Hence, with due respect, it could be said that the Privy Council decision in Durayappa v Fernando could be criticised on this ground. Nonetheless, the decision of their Lordships was based on the fact that the order of the Minister on 29th May 1966 was voidable and not a nullity. The Judicial Committee of the Privy Council said:

"Their Lordships therefore, are clearly of opinion that the order of the Minister on 29th May 1966 was voidable and not a nullity. Being voidable, it was voidable only at the instance of the person against whom the order was made, that is the Council. But the Council has not complained. The appellant was no doubt Mayor at the time of its dissolution, but that does not give him any right to complain independently of the Council. He must show that he is representing the Council or suing in its behalf".³⁵

There appear to be two interesting points to be noted in this respect. Firstly, the opinion of the Judicial Committee to the effect that the Council would have been the proper authority to complain. On the contrary a question could be raised as to whether it is possible for the Council to complain when it was dissolved. Secondly, it is a surprise to note the Judicial Committee's advice which was to the effect that the order of the Minister was a nullity instead of quashing this act as one which

35. Durayappa v Fernando, op.cit., p.274.

was ultra vires. It could be argued that the Privy Council adopted this novel approach to pave the way that the Mayor who was a third party was not entitled to question the validity of the decision of the Minister. Discussing this particular question, H.W.R. Wade, pointed out:

"It may well be that ^{where} there is a breach of the rule audi alteram partem in a case involving a charge of misconduct the court ought to as a general rule to refuse certiorari to a third party, if the party primarily affected does not complain. For it is a highly personal matter and otherwise absurd situations might arise. But it is a very different thing to say that certiorari cannot be awarded to a third party as a matter of principle, because the administrative order is voidable and not a nullity."³⁶

Does this imply that the court is reluctant to quash an unlawful governmental act? Specifically does the court hesitate to allow for a third party to question the validity of a Government decision? If the answers to these questions are in the affirmative, there is no necessity to mention that this will provide the Minister extraordinary powers to decide the life span of local authorities. However, it is impossible to confirm this theory as Durayappa's case is the only authority on this question. Since 1966, there have been no cases filed to question the validity of the decision of the Minister of Local Government and for this reason it will be necessary to wait for "future reactions" to find answers to above-raised questions, especially in the light of the developments in the process of judicial review in England and in Sri Lanka.

36. H.W.R. Wade, op.cit., p.504.

2.The inadequacies and weaknesses in the process of judicial review

An analysis of the case law on prerogative writs issued in connection with local authority decisions emphasises the fact that there are inadequacies and weaknesses in the process of judicial review in Sri Lanka. A significant feature in the process of judicial review is that on most of the occasions applications have been dismissed owing to the reason of the petitioners applying for the incorrect remedy by way of a writ. An analytical examination of the process of judicial review emphasises the fact that the common law remedies which are applicable for securing judicial review in Sri Lanka have caused numerous anomalies and inconveniences, especially due to a dual system of remedies, the prerogative orders and the declaration and the injunction. It could be argued that this procedure has created numerous problems for the litigant and this dilemma faced by the litigant to a certain extent has hindered progress and any development in the role of the judiciary. It could be further argued that the dilemma faced by the litigant due to these procedural complexities has resulted in the dearth of cases with regard to local government in Sri Lanka.

With regard to the Administrative Law remedies, Michael Elliott stated:

"Administrative Law remedies exist not so much as a method whereby the centre controls the

local, but more significantly as a way in which local inhabitants can process grievances against their "own" authorities."³⁷

However, the role of the courts could not be limited only for settling the grievances of inhabitants. While settling the disputes between the inhabitants and the local authorities, the courts could scrutinise the policies of the Central Government in relation to local authorities. By means of this procedure the judiciary could become the intermediary which could be significantly important to minimise the control of the Central Government over local authorities as well as to see that the local authorities are acting reasonably towards the local inhabitants. However, according to the Sri Lankan experience, as pointed out earlier, it could be argued that the dearth of cases has acted as one of the obstacles for the judiciary, restricting the opportunities for the courts to scrutinise and control Central Government policies towards local authorities. Hence, it is clear that a reform in the process of judicial review in Sri Lanka is overdue.

During the past few years in most Commonwealth countries efforts have been made to reform the process of judicial review. For example as a leading authority pointed out:

"A number of notable reforms to the procedural and remedial aspects of the law of judicial review of administrative action had already been introduced over the last few years in several common-law Commonwealth jurisdictions."³⁸

Moreover, the reforms in England have

37. Michael Elliott, *op.cit.*, p.66

38. S.A. de Smith, *Judicial Review of Administrative Action*, Fourth Edition, by J.M. Evans, London Stevens and Sons Ltd., 1980, p.565.

introduced a single proceeding in which any one or more of the principal common law remedies, including damages could be sought.³⁹ The different approaches in Administrative Law before and after the reforms clearly emphasise the fact that the reforms have eased the rigid procedures, providing more opportunities for a litigant to fight his case. Lord Denning, M.R., in O'Reilly v Mackman, vividly described:

"At one time there was a black-out of any development of Administrative Law. The curtains were drawn across to prevent the light coming in. The remedy of certiorari was hedged about with all sorts of technical limitations. It did not give a remedy when inferior tribunals went wrong, but only when they went outside their jurisdictions altogether Whilst the darkness still prevailed, we let in some light by means of a declaration. . . . In 1977 the black-out was lifted. It was done by R.S.C. Order 53. The curtains were drawn back. The light was let in. Our Administrative Law became well organised and comprehensive. It enabled the High Court to review the decisions of all inferior courts and tribunals and to quash them when they went wrong. And what is more, it enabled the High Court to award damages and grant declarations. No longer is it necessary to bring an ordinary action to obtain damages or declarations. It can all be done by judicial review. This new remedy (by judicial review) has made the old remedy (by action at law) superfluous."⁴⁰

Since 1982 section 31 of the Supreme Court Act of 1981 is applicable in this respect, and it could be said that this has strengthened the applicability of this procedure. Consequently, according to Lord Denning, M.R.:

"But now we have witnessed a break-through in our public law. It is done by section 31 of the Supreme Court Act of 1981, which came into force on January 1, 1982. This is to my mind, of much higher force than R.S.C. Ord. 53. That Order came into force in 1977, but it had

39. ibid., p. 566

40. O'Reilly v Mackman (C.A.) [1983] 2 A.C. 237, at pp. 253-254.

to be construed in a limited sense because it could not affect the substance of the law Rules of court can only affect procedure, whereas an Act of Parliament comes in like a lion. It can affect both procedure and substance alike."⁴¹

Under section 31 of the Supreme Court Act of 1981:

"1. An application to the High Court for one or more of the following form of relief; namely-
a. an order of mandamus, prohibition or certiorari,
b. a declaration or injunction under sub-section 2, or
c. an injunction under section 30 restraining a person not entitled to do so from acting in an office to which that section applies,
shall be made in accordance with rules of court by a procedure to be known as an application for judicial review."⁴²

Under this new procedure, leave to apply for the order is required. According to the Supreme Court Act:

"No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."⁴³

Consequently, it is apparent that this new procedure enables a litigant to apply for more than one of the remedies at one and the same time which inevitably refrains him from facing the problem that he has applied for the improper remedy. Moreover, a litigant will be protected from losing his case due to the problems of procedural technicalities, as it is necessary in the first place that the applicant has got leave of a High Court Judge in order to start the proceedings. This has also

⁴¹. ibid., p. 255

⁴². Supreme Court Act, 1981, section 31

⁴³. ibid., section 31(3).

removed the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action.

Furthermore as Lord Diplock (in the House of Lords) pointed out, this new procedure provided for the respondent decision making statutory tribunal or public authority against which the remedy of certiorari was sought protection against claims which it was not in the public interest for courts of justice to entertain. According to Lord Diplock:

"First, leave to apply for the order was required. The application for leave which was ex-parte but could be, and in practice often was, adjourned in order to enable the proposed respondent to be represented, had to be supported by a statement setting out, inter alia, the grounds on which the relief was sought and by affidavits verifying the facts relied on: so that a knowingly false statement of fact would amount to the criminal offence of perjury. Such affidavit was also required to satisfy the requirement of uberrima fides, with the consequence that failure to make an oath a full and candid disclosure of material facts was of itself a ground for refusing the relief sought in the substantive application for which leave had been obtained on the strength of the affidavit. This was an important safeguard, which is preserved in the new Order 53 of 1977. The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision. In contrast, allegations made in a statement of claim or an endorsement of an originating summons are not on oath, so the requirement of a prior application for leave to be supported by full and candid affidavits verifying the facts relied on is an important safeguard against groundless or unmeritorious claims that a particular decision is a nullity. There was also power in the court on granting leave to impose terms as to costs or security. security." ⁴⁴

44. O'Reilly v Mackman [1983] 2 A.C. (H.L.) 237, at pp. 280-281.

Hence, it is apparent that these new reforms will be highly appropriate as a solution for the above discussed problems in the process of judicial review in Sri Lanka. As has been pointed out it is apparent that the recent trend in most of the Commonwealth jurisdictions has been to review the Administrative Law remedies. Hence, it could be argued that there cannot be any hindrances in reforming the present process of judicial review in Sri Lanka in accordance with the Supreme Court Act of 1981.

The new reforms no doubt, will enable the courts to improve the relationship between the Central Government and local authorities of the country. As discussed earlier,⁴⁵ it is clear that in Sri Lanka the local Councils are functioning more or less as agents of the Central Government. Thus, the judiciary has an important role in analysing the policies as reflected in the legislature. However, before we conclude it is essential to discuss one other important point. As mentioned earlier, it is clear that the actions of the courts are formally initiated by private individuals. This means that, in reality the individuals should be persons who can either raise the necessary funds for an action or satisfy the tests for legal aid. In Sri Lanka at present the latter is not generally available for local government cases. Hence, it is essential that the individual should be able to raise the necessary funds. Consequently, the problem which will erupt at this juncture

45. Supra, Chapters Three and Four.

will be the excessive expense in litigation. This again will hinder the progress of the judiciary as the citizens will be reluctant to go into litigation due to financial problems.

Thus alongside these above mentioned reforms in the process of judicial review, if the legal aid for local government cases could be improved, this will make possible to overcome problems which have hindered the progress in the role of the judiciary in central-local relations.

Concluding remarks

It is significant according to the above discussion that the judicial review is vitally important in improving the relationship between the Central Government and the local authorities. Accordingly the role of the courts in central-local relations is enormous as a high degree of accountability is imposed on it. Nonetheless, it is apparent that with regard to the Sri Lankan experience, a reform in the process of judicial review is vitally important. It is clear that the present method applicable in Sri Lanka has hindered the progress in the role of the judiciary in central-local relations to a certain extent. Hence, as suggested above, it is necessary to reform the process of judicial review in Sri Lanka, in accordance to the present system applicable in England. This will undoubtedly pave the way for the courts to "balance the power" between the Central Government and the local authorities of the country.

Chapter Eight

The impact of finance in central-local relations

The success of a scheme for the devolution of Government will depend heavily on the financial resources of the local government institutions of the country. If the local authorities are solely dependent upon the Central Government for their finances, a decentralisation of powers may make little difference to the operation of the administrative structure. The financial resources of local authorities, however, will vary from one country to another.

According to a critique of the Layfield Committee's Report:

"different political systems sponsor widely varying degrees of local autonomy. At one extreme are federal systems where local government raises virtually all its revenue through local taxes and exercises a very high degree of discretion both over total expenditure and over the way the total is allocated. At the other extreme local government is nothing more than a system of local agencies which are completely financed by Central Government and operates under its institutions."¹

At present, however, it could be argued that the whole question of local authority finance is very complex. The experience in Sri Lanka, and especially the present problems in England, demonstrate the rigidities and complexities of local authority finance. Hence, it is clear that it is essential to examine the impact of financial relations in the country as this is a crucial question especially with regard to a devolution of the

1. Francis Cripps and Wynne Godfrey, A Critique of the Layfield Committee's Report, University of Cambridge, 1978, p. 7.

Government. Thus it is intended to analyse how far and by what means are the financial powers of local authorities to be under the Central Government control. The question is approached through an analytical evaluation of the problems connected with financial relations, especially the historical aspect of the problem with special reference to the attitude of the Government in this connection, followed by an examination of the local authority revenue, collected through taxes and licence duties from the constituents and the grants and loans obtained from the Central Government. An attempt will be made in the final part of this Chapter to analyse comparatively the financial controls of the Central Government over local authorities. The present problems faced by the local authorities in England and the attitude of the English Government towards the local authorities in this context, will be examined, especially to highlight the extent of Central Government authority over the local government institutions. Firstly, we shall be analysing the problems in financial relations with reference to the attitude of the Central Government in this respect.

I. The problems in central-local financial relations and the attitude of the Central Government

An outstanding feature of the financing of local authorities in Sri Lanka has been the inadequacy of their independent revenue, which has left them at the same time not only dependent upon the Central Government, but also nevertheless unable to discharge satisfactorily their

responsibilities in the field of local government. This seems to be a problem which prevailed during the early days and which is continuing even at present. According to Ursula Hicks:

"While the primary limiting factor in the development of local government in Ceylon is clearly not powers in general, inadequate finance was a much more serious factor. The inadequacy of financial resources in practice is apparent in every direction. . . ."2

In his report for the year 1981, the Commissioner of Local Government stated:

"More money than the amount provided for . . . public purposes had to be incurred."3

It is also significant to note the keen interest of the Central Government from very early times to study this problem and to "aim at reviewing" the relations between the Central Government and local authorities of the country. However, the structure of local government finance has remained unchanged in its essential respects, in spite of the expressed desire on the part of the Central Government to reform its financial relations with local government authorities. It is understood that this has been due to the reluctance of the Central Government to introduce the necessary amendments to the local authority legislation endowing them with new financial resources. However, it should be noted that the adequacy of financial resources available to local authorities is dependent on various factors. Mainly, it depends on the Government decisions, the legislative machinery and the local economy. Also, it depends

2. Ursula Hicks, Papers by Visiting Economists, Planning Secretariat, Colombo, 1957, p. 108

3. Administrative Report of the Commissioner of Local Government, 1981, p. 3.

on the extent to which the local authorities themselves use fully the powers given to them under the respective statutes for raising tax revenues and other income from services. According to the Sri Lankan experience, it is clear that the Central Government, as well as the local authorities, are responsible for the failure to establish central-local financial relations on a rational basis. Hence, it is essential to discuss the measures taken by the Central Government in this respect, before we turn to analyse the structure of local government finance and the present resources available to local authorities.

Since 1924 the Central Government had appointed six Commissions to inquire into the problems in central-local financial relations and to recommend as to what measures the Government should take to improve the financial position of the local authorities, which is important to note.

1. Financial Relations Commission of 1924

As the Choksy Commission of 1955⁴ observed, the first major effort to solve the problem in central-local relations was made in 1924 with the appointment of the Financial Relations Commission under the Chairmanship of Mr. J. F. Smith, the Acting Colonial Treasurer, and later of Mr. W. W. Woods, Colonial Treasurer, "to consider and report on the financial relations between the Central Government and local government and local government bodies generally

4. Supra, Chapter Four.

and to advise,inter alia,which public services were of a purely local character and which were partly of a local character and partly of a national character and to make recommendations concerning the maintenance of such public services."⁵

In their report,the Financial Relations Commission expressed the view that if local self-government was to be a success in Ceylon,it was necessary that Government should take note in its financial relations with local government authorities of the very real difficulties regarding the definition of functions which properly belong to the local government institutions as distinct from those others which constituted national government functions.⁶ Furthermore,the Commission made certain general observations regarding the attitude of the Government to local bodies in matters of finance.

"If local self-government is to be a success in Ceylon it is necessary that Government should have due regard to its financial relation with local authorities. . . .It must be recognised that local self-government will be a mere sham unless it includes responsibility for raising the revenues required to meet the expenditure of the self-governing authorities. A prevalent idea that the financial needs of local authorities should be met by the grant from the Colonial Exchequer of liberal subsidies proportionate to their needs or by the assignment of Colonial revenue to local authorities(which would be a subsidy under another name) is one that cannot be accepted. It means in plain words that the Government is to be saddled with responsibility for collecting revenue which the local authorities will spend- a situation which no Government in the world could accept. Our view is that the local authorities in Ceylon

5.C.O.57/224,The Report of the Financial Relations Commission, 1924,p.1

6.ibid.

wishing to increase their expenditure must be prepared to rate themselves adequately and where necessary, must be given legal power to do so. The imposition of adequate rates should therefore, be a condition precedent to any financial assistance from Government in the way of grants."

It is obvious that two basic principles had guided the Financial Relations Commission in formulating their recommendations. Firstly, that the local bodies which wished to increase their expenditure must be prepared to rate themselves adequately and that they should be given the legal power to do so and, secondly, that a popularly elected local body was generally faced in its early stages with great difficulties in the field of finance and it could not be expected to impose on itself a large and sudden increase of rates.⁸

It must be noted at this point that during this period, as has been discussed already,⁹ the system of local government in the country consisted of several local government institutions. Thus, there were Municipal Councils, Road Committees, Sanitary Boards, Village Committees, Local Boards and District Councils in the island. The principal sources of independent revenue of all the local councils were based on taxes, rates and licence duties levied on various subjects which will be discussed in detail in succeeding paragraphs. However, a feature which was common to all the local authorities was / ^{the} inadequacy of finance available for them to carry out the essential duties. This shows that during this period it was essential to reform

7. *ibid.*, p.5

8. V. Kanesalingam, A hundred years of local government in Ceylon (1865-1965), Modern Plastic Works Publishers, 1971, pp.100-101

9. Supra, Chapter Three.

the structure of local government finance. However, a noteworthy feature with regard to the recommendations of the Financial Relations Commission was the narrow scope of its proposals. For instance, the commission proposed some essential amendments, such as:

1. education to be considered as a semi-national service and an education rate to be levied from all local bodies; and
2. to consider the possibilities of introducing new sources of taxes, such as advertisement hoardings, amusement, betting and stamp duty on transfer of lands.¹⁰

The Commission did not consider the problem of reforming the structure of local government finance. Hence, the outcome of the suggestions made by the Financial Relations Commission was very limited. However, the most interesting point in connection with these recommendations was that even the limited proposals made were not implemented and no changes took place in the central-local financial relations irrespective of the fact that the local authorities had to shoulder new responsibilities, especially in the years following the out-break of World War II.¹¹

2. The Financial Relations Settlement of 1941

Again in 1940 the Government had to undertake an examination of the central-local financial relations due to the growing financial problems of local authorities. The outcome of this review of the financial problems of local government authorities, which is known as

10. V. Kanesalingam, op.cit., p. 104

11. ibid.

the Financial Relations Settlement, was certain new decisions made especially with regard to the allocation of money under the block grant system for the first time in the country. The question of grants-in-aid and Central Government responsibility for local services such as housing and water supply was dealt with in the Financial Relations Settlement approved by the Board of Ministers in 1946. However, this settlement dealt only with the block grants and left the main question of local government untouched.¹²

3. The Jayasooriya Committee of 1949

Thus, even after the review by the Board of Ministers of central-local relations, the agitation for an overall review of the central-local financial relations persisted. For this reason the Minister of Local Government appointed an official Committee, under the Chairmanship of Mr. V. C. Jayasooriya, the then Commissioner of Local Government, "to report on the present methods of taxation of local government authorities, their source of revenue, the need if any, for a re-formulation of the system of taxation and for further sources of revenue to enable local authorities to discharge their duties satisfactorily".¹³

The recommendations of the Jayasooriya Committee reveal their desire and eagerness to provide a more coherent basis for central-local financial relations. Their recommendations pointed to the necessity for granting

12. S. P. No. 7 of 1972, p. 16

13. ibid.

additional powers to local authorities,so that the councils may obtain an additional income through newly-introduced taxes.¹⁴The Report of this official Committee was submitted to the Government in 1949. Although the recommendations in that report were placed before the Cabinet,no final decisions were taken on them owing to the resignation of Mr.S.W.R.D.Bandaranaike,the then Minister of Local Administration,in July 1951.

4.The Choksy Commission of 1955¹⁵

The subject of financial relations was one of the several matters exhaustively dealt with in the Choksy Commission Report submitted in 1955. In their comprehensive Report,the Commission stated:

"financial relations should be reviewed periodically if not by a full Commission,at least by a Departmental Committee. Such a review should be made again in another five years."¹⁶

The Choksy Commission was of the view that it is essential to review the financial relations from time to time;this shows that it is impossible to lay down one set of principles as a solution for the question of financial relations for all time. Moreover,the Commission recommended that it was essential to increase the quantum of Central Government assistance to local authorities almost five fold,from about Rs.four million to approximately Rs. twenty million.However, as we shall be discussing in succeeding paragraphs,only some of the less important recommendations were implemented,such as revision of the

15.Supra,Chapter Three

16.S.P.No.33 of 1955,p.430.

basic data relating to the formula for payment of block grants and increase in rate of acreage tax. This shows that the Central Government was either reluctant or not sufficiently enthusiastic to implement the recommendations of the Choksy Commission.

5.Suggestions made by Mrs.Ursula Hicks

This reluctance on the part of the Central Government to reform the central-local financial relations is quite obvious as even the recommendations of Mrs.Ursula Hicks,who visited the country in 1959 with a team of visiting economists, were not implemented. As will be discussed in succeeding paragraphs,Ursula Hicks recommended certain essential reforms to improve the local authority financial situation of the country. Discussing the financial implications she pointed out:

" . . . it is very quickly clear to the outside observer that local government in Ceylon is in the doldrums.That something is wrong indeed might be deduced from the large number of Commissions and Committees which have made a clinical examination of local government and finance over the last twenty years and have advised remedial treatment."¹⁷

As will be discussed in detail later,she proposed levying rates on real property using the capital value base of such property instead of the annual rental value base.However,the Government took no steps in implementing these proposals. This reluctance on the part of the Central Government in implementing any of these

17.Ursula Hicks,Papers by Visiting Economists,op.cit., p.107.

recommendations made by several eminent authorities, as discussed above, aggravated the problems in central-local financial relations. Thus, according to Kanesalingam:

"This inactivity on the part of the Central Government measures for the implementation of the important recommendations of the (Choksy) Commission as well as the rapidly changing economic and financial conditions tended to aggravate the financial problems of local government authorities."¹⁸

Moreover, referring to this situation the Commissioner of Local Government observed in 1961:

"The local authorities are pressing that there should be an immediate settlement of the outstanding financial proposals as it is difficult for them without a considerable increase of the present sources of revenue and assistance from Government, to discharge their functions either satisfactorily or efficiently."¹⁹

6. The Official Committee of 1962

As a result of the persistent demands from local authorities for an increase of the present sources and assistance from Government, the Minister of Local Government recommended to the Cabinet that further measures be taken to improve local government finance by adopting new sources of revenue and increasing Central Government assistance.²⁰ Before making his recommendations to the Government on these proposals, the Minister of Finance in June 1962 appointed an Official Committee to examine the financial implications of the proposed measures and to report on:

18. V. Kanesalingam, *op. cit.*, p. 109

19. Administrative Report of the Commissioner of Local Government, 1960-61, p. BB 77.

20. S. P. No. 7 of 1972, p. 16.

- "a.the extent to which existing sources of local revenue remain untapped,and whether any steps should be taken to ensure that local authorities make full use of the existing sources of revenue;
- b.the feasibility of assigning to local authorities any sources of revenue presently tapped by the Central Government and on what basis such assignment could be considered;and
- c.what new sources of local revenue can be made available to the local authorities in order to enable them to carry out their functions more efficiently."

²¹

In their report to the Finance Minister on 5th July 1962,the Official Committee recommended the expansion of existing sources of local revenue and the allocation to local authorities of certain new sources of revenue. As for new sources of revenue for local government authorities,the Committee was of the opinion that they:

"have looked into the possibilities of identifying new sources of income not already tapped by the Central Government or by local authorities.No satisfactory or worthwhile source of this nature can be recommended."

²²

The Committee was of the opinion that Government subsidies to local authorities on account of living allowances may be withdrawn,if the increased financial resources suggested by them were made available to local authorities. However,the proposals of the Committee were not implemented at that time due to the unsatisfactory condition of the national finances.²³

7.The Jayasooriya Commission of 1969

Again in 1969 the Committee of inquiry on Local Government was requested to examine and make

21.Report of the Departmental Committee of Local Government Finance (Unpublished)

22. *ibid.*, p.8

23. S.P.No.7 of 1972, p.17.

recommendations on:

"the adequacy of the present sources of revenue of local authorities and what new sources of revenue should be made available to local authorities to enable them to²⁴ perform their functions more efficiently."

A most significant feature with regard to this Commission was that it was Chaired by Mr.V.C.Jayasooriya, who was the Chairman of the Committee,appointed to examine the inadequacies in local authority finance in 1949.

The recommendations of the Committee included proposals to increase the revenue from existing sources as well as to introduce new sources of revenue to local authorities which will be discussed in detail in succeeding paragraphs. The Jayasooriya Committee submitted their report in Febuary 1970. However,soon afterwards the Minister of Local Government who had appointed this Committee had,following a change of Government,vacated his office and due to this reason,as with the earlier recommendations, these too were not implemented. Since 1969 no Commissions were appointed to inquire into the problems in local government finance,and in financial relations between the Central Government and local authorities of the country.

Hence,although the Central Government had appointed various Committees to inquire into and make recommendations as to the problems in central-local government financial relations,it is clear that,other than some of the minor recommendations of these Committees and Commissions,more particularly those of the Choksy Commission,

24.ibid.,p.13.

not much headway had been made in regard to the implementation of the major reforms recommended in this respect. As has been pointed out already, the Central Government has given very vague reasons as excuses for the non-implementation of these proposals made by various Committees. However, these reasons arouse the question as to whether the Central Government was actually reluctant to improve the central-local financial relations of the country? This reluctance of the Central Government to reform the structure of local government finance had made the local authorities face the dilemma of providing people with more and better essential communal and welfare services, such as housing, electricity, water supply, environmental sanitation and health service, with inadequate finances. Hence, it is essential to analyse the structure of local government finance in Sri Lanka so as to reflect the problems in the central-local financial relations in modern local government administration.

II. Local authority revenue

Local authority revenue in Sri Lanka could be classified into three categories:

1. Local taxation;
2. Central Government grants; and
3. loans.

1. Local taxation

Local authorities in Sri Lanka are statutorily

empowered to levy rates on the assessed annual value of properties²⁵ in their areas, and they also derive revenue from licence duties on dangerous and offensive trades as well as on auctioneers and brokers, public performances and private markets and from taxes on vehicles and animals.²⁶ For instance, the Municipal Councils Ordinance provides:

"Subject to the provisions hereinafter contained, every Municipal Council shall from time to time, so often as it thinks necessary make and assess, with the sanction of the Minister, any rate or rates on the annual value of all houses and buildings of every description and of all lands and tenements whatsoever within the municipality."²⁷

further the Municipal Councils Ordinance provides:

- "1. Every Municipal Council may levy an annual tax on all vehicles and animals . . . kept or used within the municipality; or on such of them as the council may think fit.
2. The tax on vehicles and animals shall be payable at such time as the council may direct, and shall be assessed and levied in the manner hereinafter mentioned or by any by-law provided which by-laws the council is hereby empowered to make."²⁸

However, according to the local authority income and expenditure it is obvious that the revenue which is derived through levying of rates, taxes and licence duties is insufficient even to carry out their routine functions. The statistical information tabulated below, regarding the income and expenditure of Municipal Councils is instructive in this respect.

25. Municipal Councils Ordinance, section 230, Urban Councils Ordinance, section 160, Town Councils Ordinance, section 159, Village Councils Ordinance, section 37

26. Municipal Councils Ordinance, section 245, Urban Councils Ordinance, section 163, Town Councils Ordinance, section 162, Village Councils Ordinance, section 38

27. Municipal Councils Ordinance, section 230(1)

28. ibid., sections 245(1) and (2).

Income of Municipal Councils	1979 Rupees	1980 Thousands	1981
<u>Local revenue</u>			
Rates	22830.7	18830.4	22638.5
Taxes and licence duties	6987.9	7463.5	8955.6
Rents	6650.0	3262.2	3914.6
Others	11499.9	26139.4	31367.3
Total general revenue	47968.5	55730.5	66876.0
Commercial enterprises	26522.2	24360.4	30450.5
	<u>74490.7</u>	<u>80090.9</u>	<u>97326.5</u>
<u>Expenditure of Municipal Councils</u>			
Municipal Courts	108.5	364.2	422.4
Public health	16024.4	20308.6	23557.9
Water works	8166.5	9471.2	11365.4
Public works	14489.4	16188.0	18778.1
Veterinary services	789.1	1158.2	1314.5
Public libraries	2144.8	1557.3	10806.4
Public assistance and poor relief	539.7	710.6	923.8
Debt charges	1723.2	975.3	1131.3
Fire brigade and ambulances	326.5	289.5	335.8
Administrative and other charges	19187.7	19254.8	22335.5
Sub total	<u>61499.8</u>	<u>70277.7</u>	<u>90970.4</u>
Electricity schemes	18812.6	16850.3	19546.3
<u>Capital account</u>			
Grants	2806.6	1245.3	1444.5
Loans	7903.2	460.5	598.6
Revenue contribution	705.7	6945.3	8056.5
<u>Commercial enterprises and electricity schemes</u>			
Loans	251.5	5759.6	6681.1
Revenue contribution	874.2	3402.5	3946.9
Grand total	<u>92853.0</u>	<u>104941.2</u>	<u>131244.3</u>

Table VIII-The income and expenditure of Municipal Councils during the period 1979-1981

Source: Department of Local Government, Colombo

This reveals that generally the local authorities have a deficit balance at the end of a financial year. This has made the local authorities dependent on Central Government grants and loans, which will be discussed in detail in the forthcoming paragraphs. Before that it is essential to analyse why it is difficult for the local authorities to obtain an adequate income for their expenditure through these sources of local authority independent revenue.

A detailed study of the sources of local authority revenue points out that this could be classified into three main categories, namely the rates, taxes and the licence duties. As has been mentioned already, the Municipal Councils, Urban Councils and Town Councils have the power to make and assess any rate or rates on the annual value of all houses and buildings of every description and of all lands and tenements whatsoever within the municipality.²⁹ The Municipal Councils, Urban Councils, Town Councils and Village Councils can levy an annual tax on all vehicles and animals.³⁰ The Municipal, Urban, Town and the Village Councils have the power to derive revenue from licence duties on dangerous and offensive trades, on auctioneers and brokers, on public performances and private markets.³¹ Similarly in Village Council areas the Village Councils have the power to impose and levy a land tax. According to the Village Councils Ordinance:

"1. A land tax may be imposed and levied under this section by any Village Committee which

29. op.cit., notes (25) and (26)

30. ibid.

31. ibid.

- is authorized in that behalf by the Minister by notification published in the Gazette.
2. The land tax under this section shall consist of either or both of the following:
- a. an assessment tax not exceeding six percentum of the annual value of all buildings and all lands situated in localities within the village areas which are declared by the Village Committee with the approval of the Assistant Commissioner to be built-up localities; and
 - b. an acreage tax not exceeding fifty cents a year on each acre of land which is situated outside a built-up locality and is under permanent cultivation or regular cultivation of any³² kind other than paddy and chena³³ cultivation."³⁴

As will be discussed in detail later,³⁴ the introduction of Development Councils in place of Town and Village Councils in 1981 was not accompanied by any change in the system of levying rates or taxes within a Development Council area. The Development Councils Act of 1980 provided:

"A Development Council shall in relation to any development plan have the power to levy by a by-law such taxes, rates or other charges as may be determined by the council and approved by the Minister with the concurrence of the Minister in charge of the subject of finance and such by-law shall have effect upon confirmation by Parliament and notification of such confirmation published in the Gazette."³⁵

Yet in practice, up to the present time, Development Councils derive their independent revenue solely through the property rates, assessment or acreage taxes and licence duties, just as the former Town and Village Councils did before 1981.³⁶ Hence, the property rates, taxes on vehicles, animals and lands and the licence duties are the most important sources of revenue for local authorities. We shall be discussing in detail these three categories of revenue to analyse the financial problems which

32. Plots of cleared lands inside jungles

33. Village Councils Ordinance, sections 37(1) and (2)

34. Infra, Chapter Nine

35. Development Councils Act, section 25

36. Personal interview.

have made the local authorities to depend on the Central Government grants and loans.

i. Property rates

As mentioned earlier, the Municipal, Urban and Town Councils are empowered to make and assess, with the sanction of the Minister, any rate or rates on the annual value of all houses and buildings.³⁷

In the category of local taxation, this basic local rate is the only important source of autonomous local revenue accruing to these authorities in developing areas and towns. This basic local rate on lands and buildings assessed in their annual value is similar to the English local rate and was introduced for the first time in 1865.³⁸ The range of this tax is wide since this is levied by all urban authorities. However, it is clear that this basic property rate has many weaknesses in principle as well as in practice. Hence it is essential firstly, to examine the basic principles in assessing property rate before we analyse the inadequacies and weaknesses in its procedure.

The property rate is levied on houses and buildings in Municipal Council areas and from any immovable property within the locality of Urban and Town Councils of the island.³⁹ The rates as mentioned are assessed on the basis of annual value of all these properties. According to the local authority Ordinances the annual value means:

37. op.cit., notes (25) and (26)

38. Supra, Chapter Three

39. Municipal Councils Ordinance, section 230, Urban Councils Ordinance, section 160, Town Councils Ordinance, section 159

"the annual rent which a tenant might reasonably be expected taking one year with another, to pay for any house, building, land or tenement if the tenant undertook to pay all public rates and taxes, and if the landlord undertook to bear the cost of repairs, maintenance and upkeep if any, necessary to maintain the house, building, land or tenement in a state to command that rent."⁴⁰

Earlier, the valuation of property was carried out according to the provisions of the Rating and Valuation Ordinance.⁴¹ However, since 1970 the proceedings to value and rate the property are done in accordance with the Municipal Councils Ordinance, which provides:

"The council shall cause to be kept a book, to be called the "assessment book", in which the annual value of each house, building, land or tenement within the municipality shall be entered every year and shall cause to be given public notice thereof and the place where the assessment book may be consulted."⁴²

In order to enable a local authority to assess the annual value of any house, building, land or tenement which is liable to be rated the council will request the owner or occupier of such house, building, land or tenement to furnish returns of the rent or annual value of such property.⁴³ Moreover, an officer of the local authority may inspect and survey such property to assess the annual value of the property concerned.⁴⁴ It is the duty of the owner of any house, building, land or tenement to notify in writing to the local authority the completion of any new building or of any addition to an existing building intended for occupation.⁴⁵ When such physical alterations are made after the assessment, generally the local authority will prepare a

40. Municipal Councils Ordinance, section 327(1)

41. Chapter 266

42. Municipal Councils Ordinance, section 235(1)

43. ibid., section 234(1)

44. ibid.

45. ibid., section 234(2).

new assessment for such premises. Furthermore, according to the Municipal Councils Ordinance:

"It shall not be necessary for a Municipal Council (or an Urban or a Town Council) to prepare a new assessment every year, but the council may adopt the valuation or assessment for the preceding year with such alterations as may be in particular cases be deemed necessary as the valuation or assessment for the year following."⁴⁶

Generally the local authorities send the notice of assessments and the amounts to be paid to the owner of the respective property.⁴⁷ In Sri Lanka, the local authorities collect the rates every quarter of a year.⁴⁸ The local authorities are empowered to issue warrants for the recovery of unpaid rates with costs.⁴⁹ On paper this seems to be a worthwhile and a workable procedure, and it seems that generally under the property rates the local authorities are able to collect a sizeable amount of revenue within their localities. However, a close analysis of the basis of the property rate and procedure in assessments shows that this tax is not good both in principle and in practice.⁵⁰ According to Ursula Hicks, who examined the problem of local government finance two decades ago:

"In Ceylon the basic local tax (rate) is one on land and building assessed on annual value exactly parallel to the British local rate. The range of this is very wide including all authorities except the purely local areas of Village Council jurisdictions. It is extremely unpopular and local authorities undoubtedly have great difficulty in wringing payment out of the people There is no doubt however, that the tax is badly handled."⁵¹

46. *ibid.*, section 238

47. *ibid.*, section 235(3)

48. Personal interview

49. Third Schedule to the Municipal Councils Ordinance

50. Ursula Hicks, *op.cit.*, p.109

51. Ursula Hicks, *Development From Below*, Clarendon Press, Oxford, 1961, pp.163-164.

Thus, it is important to analyse the weaknesses and inadequacies in property rates.

With regard to the property rates it could be said that this rate itself both in principle and in practice contributes in no small measure to the problem of inadequate finances because neither its base nor the volume of revenue derived from it has expanded sufficiently. This has been partly due to the inadequacies in the method and procedures of calculating the base of the rates - the annual rental value - and partly due to the delays in revising the valuations of real property for rating purposes.

In Sri Lanka the valuation of houses, buildings and tenements is carried out by the local authorities themselves. The Valuation Department of the Ministry of Lands is efficient and in principle its services are available to local government authorities. However, in practice there has not been adequate staff to undertake periodical valuations. Moreover, local authorities seem to be reluctant to employ the officers of the Valuation Department due to heavy expenses the authorities have to incur in this respect. The ultimate result is that the local authorities depend on the valuations of their "semi-skilled" officers which has resulted mostly in being unable to collect the correct amount of rate revenue. This emphasises the fact that it is essential to have a proper system of valuation and also to bring valuations of real property up-to-date. When valuations are out of date the unrevised rates on older

properties do not reflect the true contribution owners of these properties should make towards the cost of local government, while owners of new properties may have to pay correspondingly higher rates.⁵²

In addition to the delays and irregularities in valuation of real property for rating purposes, there are other factors which contribute to the rigidities of rate revenue. As mentioned earlier, according to the local authority regulations it is essential that the councils collect the returns of the rent or annual value from the owners and occupiers of the property.⁵³ In Sri Lanka, the majority of houses in larger towns, especially in Colombo - the Capital - are owner-occupied.⁵⁴ In such cases owners of houses who are themselves their occupants derive no tangible benefits by having the rental values of their houses fixed on a realistic basis. Moreover, as Kanesalingam has correctly pointed out:

"It is relatively easy to place/^a fictitiously low value on any particular property and the owner actually benefits by this since his rate liability becomes correspondingly lower."⁵⁵

A second factor contributing to the rigidity of rate revenue is the operation of the Rent Act, No. 7 of 1972. According to this Act:

"It shall not be lawful for the landlord of any premises-
a. to demand, receive or recover as the rent of such premises in respect of any period commencing on or after the date of commencement of this Act any amount in

52. V. Kanesalingam, op.cit., p. 132

53. Municipal Councils Ordinance, section 234(1)

54. Personal interview

55. V. Kanesalingam, op.cit., p. 133.

- excess of the authorized rent of such premises as defined for the purposes of this Act in section 6 or as the case may be, in excess of the receivable rent of such premises as defined for the purposes of this Act in section 7; or
- b. to increase the rent of such premises in respect of any such period to an amount in excess of such authorized rent or such receivable rent."⁵⁶

It is clear that it is difficult for a landlord to increase the rental values and hence their rate liabilities cannot rise simultaneously with the increasing prices. The effect of this is that during a period of inflation and rising costs of administration there tends to be a long time lag between a rise in general prices and an increase in tax yields on property. This is to be expected with rents which are variable in relation to other prices and, moreover, with the rent restriction in operation.

This reveals that most of the rigidities in rate revenue are centred around the annual rental value base. As Ursula Hicks observed:

"This tax is more or less good than it could or should be, both in principle and in practice. In the first place the annual value base (which would appear to have been taken over from the British local rate) is appropriate for a tax which is to be assessed on tenants (the party which is interested in yearly costs) in a situation in which most property is rented. This is certainly not the case in Colombo and would not seem to be the case elsewhere in the island".⁵⁷

Although this was observed some two decades ago, similar problems prevail even at present in the country. Thus, it is clear that it is essential to introduce an alternative basis for the rate revenue instead of the annual rental value base. Certain alternative proposals were

⁵⁶. Rent Act, sections 3(1)a and 3(1)b

⁵⁷. Ursula Hicks, Papers by visiting economists, op.cit., p.109.

submitted to the Government by Mrs. Ursula Hicks who visited the country in 1959. She proposed levying rates on real property instead of the annual rental value base as at present. According to her:

"If the selling price/capital value base were to be used instead, it would automatically include the market's valuation of development expectations at expected prices. Capital value thus provides a much more expanding base for a local tax than annual value. Since unused and undeveloped property clearly has a market value even if there is no tenant, the capital value base automatically disposes of this difficulty also. . . . A change to the capital value base will also require that a regular register of real estate transactions should be kept including any particulars which would be especially helpful to valuers. This register of real estate transactions should be kept including any particulars which would be especially helpful for valuers. This register should always be at the disposal of the valuers who should keep themselves familiar with it. For subsequent regulations however, the capital value base should actually be simpler in Ceylon conditions than the process of presuming annual values from capital values."⁵⁸

However, the Central Government has taken no steps to implement the capital value, in place of the present annual rental value, base. Since the Sri Lankan authorities have adopted the rating system from England, it is essential at this point to examine the structure of rate revenue in English local authorities to analyse its problems for the purpose of identifying a workable solution for the prevailing problems in local authority rate revenue.

A detailed study of the English local authority rate revenue discloses similarities with, as well as certain differences from, the rating system of local

58. ibid.

authorities in Sri Lanka. Firstly, dealing with similarities, it is clear that in England the local rate is based on the annual value of the respective property,⁵⁹ just as the case in Sri Lanka. Although the amount of rate is fixed by the local authority, the limit on which the rate is levied, the value of each hereditament⁶⁰ in the district, is assessed by a department of the Central Government on principles uniform to the whole country. This needs a detailed discussion as it varies from the system which is adopted in Sri Lanka, in which the valuations are more or less carried out by the local authorities themselves, as discussed above.⁶¹ According to the English system the valuation of hereditaments for rating purposes is the responsibility of the Board of Inland Revenue. The local valuation officer is responsible for the initial compilation of the valuation list.

However, the decision of the valuation officer is not final and conclusive as the local authorities and rate payers have a right to object to the proposals. If the valuation officer does not accept any such objection the matter is referred to the local valuation court, which is an administrative tribunal, for determination, subject to an appeal to the Lands Tribunal and from there to the Court of Appeal and from the Court of Appeal finally to the House of Lords.⁶² Comparatively it could be said that the valuation methods adopted in England are much more practical than those operated in Sri Lanka. However, in England the annual rental value base for rating property has been criticised severely.

59. J.F. Garner, Administrative Law, Fifth Edition, Butterworths, London, 1979, p. 434

60. A technical expression meaning property liable to rating, Rate Act of 1967, section 117

61. Supra, pp. 331 - 333

62. J.F. Garner, op.cit., p. 435.

It has been said that the system of valuation is unsatisfactory partly because there is a lack of rental evidence to determine particularly the ratable value of domestic properties.⁶³ Thus, it is clear that capital value, rather than the rental value, should be used for the valuation of domestic property.⁶⁴ Moreover, the Layfield Committee, in its Report⁶⁵ published in 1976, recommended that it was essential to base the future assessments on capital values rather than, as in the past, on rental values.⁶⁶

Since the Central Government's Green Paper on "Local Government Finance" in 1977, a report of a joint central-local government working party has also been published which dealt with the question of changing the methods of valuing domestic property from a rental to a capital value base.⁶⁷ The Layfield Committee's proposals have been subjected to much criticisms. However, no implementation of the recommendations has appeared.⁶⁸ No other proposals with regard to the variations of the valuations of the domestic property from annual value to the capital value basis have been accepted. The reason for this, according to Hepworth, is not that the Central Government is opposed to the capital value basis of rating but rather that it does not believe it could obtain the support of Parliament for the necessary legislation.⁶⁹

Furthermore, with regard to the rate revenue England is facing more severe problems which needs discussion. Ten years ago, the present British Prime Minister, Mrs. Margaret

63. N.P. Hepworth, The Finance of Local Government, London, George Allen and Unwin, Sixth Edition, 1980, p.109

64. ibid., p.111

65. Cmd. 6453

66. ibid., p.291

67. N.P. Hepworth, op.cit., p.278

68. J.F. Garner, op.cit., p.300

69. N.P. Hepworth, op.cit., p.300.

Thatcher, pledged to abolish the domestic rates, a pledge which is said to have come through the pressure from disillusioned supporters in Scotland.⁷⁰ Moreover, the Prime Minister has promised to reform the rating system before the next General Election.⁷¹ Hence, at present in England the most crucial question in hand is the abolition and replacement of the system of domestic rates. According to Hepworth, the consequences of abandoning domestic rates are more far-reaching than might appear from a superficial analysis, although the domestic ratepayer contributes only a relatively small portion of local authority income.⁷² Furthermore, he points out:

"could local government in practice retain an effective non-domestic rate revenue? Only domestic rate-payers have the right to vote and the impact of the rate levied upon domestic ratepayers is an important factor in the accountability and it will remove a practical electoral constraint upon non-domestic rate levies. The inevitable result of such a situation would be Central Government control of non-domestic rate bills. The practical consequences of that would be the loss of this form of revenue to local government because it would in effect become at least an assigned revenue of Central Government with no local power to vary the income."⁷³

This will in no sense be a means to create better relations between the Central Government and local authorities of the country. Another alternative to the rate revenue would be a local tax, which would create more problems in principle as well as in practice. In principle if an income tax is introduced, the local authorities will inevitably become the collecting authorities and it is doubtful that the Central Government would give a power

70. Local Government Review, 25th May 1985, Volume 149, No. 21, p. 399

71. ibid.

72. N.P. Hepworth, op.cit., p. 112

73. ibid.

to local government to levy an income tax. In practice even the local authorities would lose their power to vary their income at the margin.⁷⁴ However, it is rumoured that the British Government is "thinking seriously" of the imposition of a Poll tax in place of the rating system.⁷⁵ As the Editor of the Local Government Review pointed out:

"During the last few days the Cabinet is believed to have given further consideration to the concept of a Poll tax as an alternative to domestic rates. It is rumoured that the Government has abandoned any idea of using the electoral register to provide a list of people in each area liable for tax or of using other official records for this purpose. It seems probably that the Cabinet will not have endorsed any particular plan, except that its per capita levy might be called "a residents' tax" to avoid suggestions that it wants people to pay for the right to vote. Nevertheless, the Environmental Secretary was asked to arrange for his department to do some more homework on the issue including in particular how to draw up the list of residents in each area, how to keep it up to date and avoid evasion and in particular how to organise collection of the tax."⁷⁶

The Rating and Valuation Association, which examined the implementation and operation of a Poll tax in England, has submitted its findings to Mr. Kenneth Baker, the Minister of Local Government, and Mr. William Waldegrave, the Joint Parliamentary Under Secretary of State for the Environment, who are currently conducting a review of local government finance.⁷⁷ The document points out that Poll tax has seemingly emerged as a front runner in the debate on local taxation, despite the fact that it has been rejected in the past by a number of authoritative inquiries and investigations. The document examines the

74. ibid.

75. Local Government Review, op.cit., p.402

76. ibid.

77. ibid.

advantages and disadvantages of a Poll tax both as a complete replacement for domestic rates and as a supplement to them.⁷⁸

According to the Rating and Valuation Association:

"In truth the Poll tax is unfair and inequitable, the administrative problems involved in its operation are well nigh insuperable; unarguably it fits into the unenviable position of being the worst possible tax to be levied in any circumstances. Local property tax is vastly superior in all respects."⁷⁹

In its conclusion the paper stated:

"Poll tax has an undistinguished record in practice. It is only levied in a small number of countries abroad at relatively low levels and operates as a supplement to fairer and more logical local taxes. On the classic criterion for taxes to be "easy to identify, difficult to evade and cheap to collect", it fails on every ground, in contradiction to a local property tax which fulfills all the canons. On grounds of fairness and equity, Poll tax falls down on account of its extreme regressiveness whereas rates are logical and reasonable in that the occupier of more expensive property pays a higher contribution to local funds, whereas his counterpart in cheaper property pays less."⁸⁰

However, with regard to England the problems in local government finance are not limited to rate revenue, as it will appear in the forthcoming paragraphs. Nevertheless, it could be said that preparing immediate legislation to relieve the ratepayers, hard-pressed by the level of rates, will in no sense be a solution to this "long-pressed" problem. It should be noted that in Sri Lanka over 30% of the independent revenue of local authorities is collected through the rate revenue and, if the basis of the rate revenue is charged from the annual rental value to the capital value, the council would be able to collect a higher revenue without

78. ibid.

79. ibid.

80. ibid.

doubt.

ii. Taxes

As pointed out earlier, in addition to the rate revenue of the local authorities, taxes are also collected from various properties. These taxes could be classified mainly into two categories, viz,

1. The land tax; and
2. The tax on vehicles and animals.

The tax on vehicles and animals, although a source of revenue of local authorities, cannot be regarded as an important tax. The Municipal, Urban and Town Councils are empowered to levy an annual tax on all vehicles and animals specified in the respective Ordinances.⁸¹ However, the local land tax which is imposed and levied in Village Council areas as an assessment as well as an acreage tax has created many problems which need discussion. According to the Village Councils Ordinance:

- "1. A land tax may be imposed and levied under this section by any Village Committee which is authorised in that behalf by the Minister by notification published in the Gazette.
2. The land tax under this section shall consist of either of both of the following:
 - a. an assessment tax not exceeding six percentum of the annual value of all buildings and all lands situated in localities within the village area which are declared by the Village Committee with the approval of the Assistant Commissioner to be built-up localities; and
 - b. an acreage tax not exceeding fifty cents a year on each acre of land which is situated outside a built-up locality and is under permanent cultivation or regular cultivation

⁸¹ Municipal Councils Ordinance, section 245, Urban Councils Ordinance, section 163(2), Town Councils Ordinance, section 162.

of any kind other than paddy and chena cultivation."⁸²

Out of these two taxes viz, the assessment tax and the acreage tax, the problems are mainly centred around the acreage tax which could be regarded as a basic local tax. Sri Lanka, as has been pointed out,⁸³ is a country which has an agricultural economy. Most of its population live in village areas and cultivate plots of land most of which are less than five acres in extent.⁸⁴ Moreover, the farmers are generally involved in growing paddy as it is the staple food item of the nation. Hence, if the Village Councils were to collect an income through the taxes it was essential that the taxes must be levied mainly from plots of paddy land which are less than five acres. However, according to the Village Councils Ordinance, no acreage tax was to be levied from paddy and chena cultivation.⁸⁵ Moreover, the Village Councils Ordinance provide:

"No assessment tax or acreage tax shall be imposed by any Village Committee on-
any divided portion of land duly defined and forming one property which is situated in any part of a village area other than a built-up locality and is less than five acres in extent."⁸⁶

Owing to the provisions of the Village Councils Ordinance the great bulk of farmers make no regular contribution to local government by means of revenue although, as Ursula Hicks has correctly pointed out, they were by no means destitute.⁸⁷ In 1955, when the Choksy Commission was conducting their investigations, there was a persistent and steady demand by practically all the Village Councils and Associations of Village Councils, for increased revenue

82. Village Councils Ordinance, sections 37(1), 37(2)a and b

83. *Supra*, Chapter One

84. Statistical abstract of Ceylon/Sri Lanka

85. Village Councils Ordinance, section 37(2)b

86. *ibid.*, section 37(2)e

87. Ursula Hicks, Development From Below, *op.cit.*, p.164.

from the acreage tax.⁸⁸ As a result of this enthusiasm the Choksy Commission had to deal with this problem and it took the view that there was a need to lower the limit of exemptions from five acres to one acre⁸⁹ and to include paddy lands in the acreage tax. The Choksy Commission stated:

"There has been a persistent and steady demand by practically all the Village Committees and Associations of Village Committees, for increased revenue from the acreage tax. As land tax in one form or another, is generally the main source of revenue which Village Committees can administer and develop on their own it seems to us that acreage tax provides a means by which Village Committees may legitimately get additional revenue from land. We are however, of the view that the minimum taxation extent should be reduced from five acres to divided extents of one acre and that the maximum rate of fifty cents per acre be raised to two rupees per acre under permanent cultivation."⁹⁰

However, these recommendations were not implemented by the Government. Again in 1972, the Jayasooriya Committee⁹¹ was of the view that the power conferred on a Village Council to impose and levy an acreage tax in a village area had enabled quite a large number of councils to obtain sizable revenues for their normal programmes and even to provide a few additional amenities.⁹² However, they too agreed that the majority of farmers were excluded from taxes due to the limitations in the Village Councils Ordinance. Also again there were representations to the Committee, that Village Councils should be empowered to levy the acreage tax on all cultivated lands over one acre.⁹³ It was alleged before the Committee that lands in village areas were being further

88.S.P.No.33 of 1955,p.298

89. *ibid.*, p.299

90. *ibid.*, p.298

91. *Supra*, pp. 324-326

92.S.P.No.7 of 1972,p.34

93. *ibid.*

fragmented to avoid payment of the acreage tax. The Committee recommended that all cultivated lands over two acres in extent be made subject to an acreage tax,⁹⁴ and also that paddy lands over two acres in extent be made subject to a tax on account of the considerable income stated to be accruing to paddy land owners. As a result of these suggestions since 1972 the acreage tax of all agricultural property is levied at the rate of Rs.2 per acre.⁹⁵ Although this increased the revenue of Village Councils, it should be noted that even this did not yield adequate revenue for the councils to enable them to finance all their schemes without depending on the Central Government. Even after the introduction of Development Councils these problems still continued as no steps were taken to introduce any new sources of revenue to village areas by means of taxation. As will be apparent later, all the local authorities including the Development Councils still have to depend mainly on the Central Government grants and loans. The problems which are raised by the systems of rates and taxes arise equally in connection with the remaining source of revenue, the licence duties.

iii. Licence duties

Revenue is derived from licence duties on dangerous and offensive trades as well as on auctioneers and brokers, on public performances and private markets. However, even this source of income is faced with difficulties,

94. ibid.

95. Statistical abstract of Sri Lanka, Government Publication, 1973.

especially due to the lack of interest mostly on the part of the Central Government in revising the methods of categorising the subjects to derive the licence duties. The problems in the collection of licence duties from dangerous and offensive trades, for instance, demonstrate, on the one hand, the inadequacies of local authority legislation and, on the other hand, the attitude of the Central Government towards local authorities especially in making amendments for local councils to derive sufficient independent income within the localities. Generally licence duties are levied on premises where dangerous and offensive trades are carried on. On the one hand this is to promote public health and on the other hand it supplies^a means of obtaining revenue for local authorities. However, one fact which is apparent in this respect is that some of the trades which have been included in the dangerous and offensive category can hardly be classified as either dangerous or offensive. Discussing this aspect, the Choksy Commission reported:

"they appear to have got on to the list more in an attempt to augment revenue rather than through any real desire to safeguard the public because many of them cannot by any known test be said to be either dangerous or offensive."⁹⁶

Moreover, in an appeal to the Supreme Court in the case of Gunasekera v Municipal Revenue Inspector⁹⁷, in which the appellant, an auctioneer, was charged with storing furniture in alleged contravention of a by-law which purported to declare the business of manufacturing or storing of furniture to be an offensive trade or business, Gratiaen, J.,

96.S.P.No. 33 of 1955, p.290

97.(1951) 53 N.L.R. 229.

stated:

"I have examined for the purpose of this appeal some of the trades or business declared by the Municipal Council of Colombo to be "offensive or dangerous", and I would very much like to be convinced that section 148 has not come to be regarded merely as a convenient instrument for revenue collection, rather than, as it should be, a valuable safeguard to promote the public health. In England the practice of local authorities entrusted with similar delegated legislative functions is to invoke some consultative machinery before finally deciding whether trades should be prohibited as potentially "offensive" or "dangerous". Whether such machinery is resorted to by any Municipal Council in this country, I frankly do not know."⁹⁸

Owing to this problem on many occasions it has been difficult for the local authorities to levy taxes from such places and, with regard to this problem, the Choksy Commission suggested:

"in the case of such premises as are used for trades or businesses which can without doubt be regarded as either dangerous or offensive, it would be correct and desirable to include them on a special list of such trades and businesses."⁹⁹

However, the Government took no interest in complying with these recommendations and so far no steps have been taken to introduce some consultative machinery such as in England which is essential if the local authorities are to derive a reasonable income from the licence duties.

The ultimate result of these inadequacies in the structure of the local government finance has been the insufficiencies of local authority independent revenue. The above discussion reveals that there are weaknesses in

98. *ibid.*, pp. 233-234

99. S.P. No. 33 of 1955, p. 291.

the machinery of local government rating and taxation which have made the local authorities dependent upon Central Government grants and loans.

2. Central Government grants

In Sri Lanka local authorities are heavily dependent on the Central Government grants. For instance in the year 1981, in addition to some of the basic grants, the following grants were given to the local authorities.

1. Cost of living and other general activities	Rs 3,356,567.00 ^C
2. Grants in lieu of abolished revenue	1,144,597.09
3. Grants in lieu of licence duty on motor car vehicles	298,007.48
4. Stamp duty on land transactions in respect of Village Councils	968,710.46
5. Salaries and allowances of Village Council employees	22,440,226.86
6. Maintenance of conservancy and scavenging services	131,640.00
7. Maternity and child welfare	440,900.00
8. Board of Health, Diyatalawa	45,468.64
9. Sanitary facilities for pilgrims	25,000.00
10. Anti Filarasis contributions	103,260.00
11. Special allowances	40,453,007.80
12. Grants in lieu of special tax on admission to the Zoo and aquarium	25,000.68
13. Contribution to Colombo Municipal Council in lieu of revenue on water tax	5,000,000.00
14. 10% allowance	15,239,886.22
15. Contribution to Municipal Councils in respect of allowances to Mayors, Deputy Mayors and councillors and allowances to the Chairmen and members of Urban Councils] > 2,849,850.00]
16. Contribution for maintenance of Religious places	46,000.00 (1)

1. Administrative Report of the Commissioner of Local Government, 1981, p. BB 22.

Thus, it is clear that most of the financial aid to local authorities from the Central Government is given in the form of grants which basically can be categorised into four types, namely:

1. The block or the general purposes grant;
2. Cost of living allowances and special living allowances;
3. Assigned revenue; and
4. Specific grant.

Out of these four types of grants, the formulas for payment of block grant and specific grants demonstrate the necessity of reviewing the present policy.

i. Block grant (General purposes grant)

The Central Government's undertaking to pay block grants annually to the four types of local authorities was an outcome of the Financial Relations Settlement in 1946.² The introduction of a system of block grants to local authorities was the most important of the decisions contained in this settlement. The grants constituted annual payments to the four types of local authorities, computed on the basis of population and income of the respective councils. With regard to Municipal, Urban and Town Councils the amount of block grants paid to them was a percentage of the annual average revenue for the three years 1943, 1944 and 1945. The percentage itself varied according to the population within the respective urban areas, the lower the population the higher was the percentage of the revenue paid as grant. For

2. Supra, p. 319

instance, if the population of the area of a Town Council was less than 10,000 the council was entitled to 40% of the average annual revenue as explained above and where the population was over 10,000 this percentage was reduced to 30%. However, lower percentages were made applicable to Municipal Councils. For instance, if the population within the municipal area exceeded 300,000 the block grant payable was 3% of the average annual revenue. On the other hand, the block grant paid to Village Councils took into account the average revenue of Village Councils instead of the population within the council area. For instance, if a council's annual revenue was under Rs. 1,000, the block grant payable was 100% of such annual revenue. However, this percentage declined gradually with the increase in annual revenue.³

This grant no doubt gave the local authorities the financial assistance to carry out their day-to-day functions. However, the most notable feature during the early years of the introduction of this grant was that for over a decade the data regarding population and income which was the basis on which the amount of such grants were to be calculated was not revised. Hence, during the period 1946-1956 the same amount was distributed as block grants among the various authorities.⁴ Following the Choksy Commission recommendations the Department of Local Government revised this basis in 1958.⁵ Thus, the Commissioner of Local Government in his annual report for 1957, pointed out the significance of this revision:

3. V. Kanesalingam, op.cit., pp. 104-105

4. ibid.

5. Administrative Report of the Commissioner of Local Government, 1957-58, p. 7

"One important financial benefit, however, was promised to local authorities during the year, namely the decision by the Government to increase the block grants given to local authorities on the basis recommended by the Choksy report. Up to now the total block (general purpose) grant payable to local authorities was a sum of Rs.2.05 million. The Cabinet accepted the principle set out in the Choksy report and provision has been made in the estimates for 1957/58 for paying much larger grants. Rs.5.15 million will be received on the new basis in the financial year 1957/58 as the block grant. This new basis will benefit local authorities by raising their block grants on an average by about 125%, from what it was last year. Village Committees too have been given a national minimum on the block grant, namely, that no Village Committee should get less than Rs.3000."6

The formula introduced by the Choksy

Commission which is tabulated below was based on the population and needs of the council.

=====		
<u>Municipal Councils</u>		
Population below 50,000		15% of the average revenue
50,000 -100,000		12% for three years preceding
100,000-200,000		8%
200,000-300,000		6%
above 300,000		3%
<u>Urban Councils</u>		
Population below 5,000		30%
5,000 -15,000		25%
15,000-25,000		20%
above 25,000		15%
<u>Town Councils</u>		
Population below 5,000		40%
5,000 -10,000		30%
10,000-15,000		25%
above 15,000		20%
<u>Village Councils</u>		
Population below 5,000		100%
5,000 -10,000		75%
10,000-20,000		50%
20,000-50,000		30%
over 50,000		25%

Table IX -The block grant formula of the Choksy Commission

Source: S.P.No.33 of 1955, pp.315-316, para.1013

6. ibid.

With regard to the basic formulas which are adopted in England it is accepted that the precept of a block grant based on wealth and needs, as adopted in Sri Lanka, is a satisfactory means of providing financial assistance to local authorities.⁷ However, according to the Sri Lankan experience it is clear that although the method is acceptable the basic statistics which are being used are out-dated and inadequate. It is clear that this has been the problem since the mid-1950s, as Ursula Hicks observed in 1960:

"the formula used in Ceylon, however, seems to be based on such out-of-date population and revenue figures that it has become both inadequate and inequitable. If it is to continue it needs to be kept up to date with current conditions."⁸

In 1974 the Government decided that, instead of the block grant and the payment of cost of living allowance and special living allowance to employees of Municipal, Urban and Town Councils which will be discussed in detail later, part of the revenue derived from the business turnover tax was to be assigned to the local authorities. Since, this decision has not yet been implemented the block grant continues to be paid. However, it must be noted that the use of out-dated statistics, which is the main weakness with regard to block grants, is still prevailing as even at present each local authority receives only the same amount as it received in 1974.⁹

ii. Cost of living allowance and the special living allowance

Cost of living allowance and special living

7. N.P. Hepworth, op.cit., pp. 61-63

8. Ursula Hicks, Papers by visiting economists, op.cit., p. 113

9. Supra, Chapter Four.

allowance are paid by the Government to all employees of local authorities since the enactment of the Local Government Service Commission Act¹⁰ in 1946. All monthly paid officers and servants of all the local authorities, except certain officers with specific posts, are eligible for these allowances as they are members of the Local Government Service. According to the Local Government Service Law, No. 16 of 1974 which repealed the 1946 and 1969 Acts:¹¹

"The [Local Government] Service shall consist of all monthly paid officers and servants of Municipal Councils, Urban Councils, Town Councils and Village Councils other than the officers and servants whose posts are specified in the schedule."¹²

Further the Act provides:

"The Minister shall provide and determine all matters relating to members of the service including the formulation of schemes of recruitment, payments and remuneration and codes of conduct for members of the service . . ."¹³

These grants were introduced for the first time in 1941 as a "war allowance".¹⁴ When Government decided in 1941 to pay what was then termed "war allowance" to its employees on a restricted scale, the local authority employees too asked for such payments. At the outset these payments were made only by councils whose financial position permitted payment on their own, as Government did not subsidise local authorities for this purpose. In 1946, Government decided to pay the full amount required by the local authorities as cost of living allowance, provided the Government scheme of payment was adopted by local bodies. Firstly, the Colombo

11. No. 3 of 1946 and No. 18 of 1969

12. Section 2(2)

13. Section 6(2)

14. S.P. No. 33 of 1955 p. 324

Municipal Council did not accept these conditions. However, in 1947 the Municipal Council agreed with the Government and was permitted a refund for the full cost of living allowance paid to its staff.¹⁵ Since 1947 the cost of living allowance and special living allowance paid by the local authorities to their staff is refunded by the Central Government in the form of special grants. In 1981 the Central Government grant to local authorities in the form of the general purposes grant and refund of cost of living allowance and special living allowance amounted to over Rs.65,000,000.¹⁶

It is true in one sense that the payments from Central Government are a good means for the local authorities to carry out their routine functions. However, it is essential that the local authorities must have control over their own staff, and for this purpose it is essential that the local authorities should be fully responsible for the remuneration of their staff. As Kanesalingam has correctly pointed out:

"If their revenue is not sufficient as they actually are at present, their sources of income should be made more flexible by recasting the local rate structure, liberalizing the basis of block grants etc."¹⁷

iii. Assigned revenue

By means of this grant it is intended mainly to compensate local authorities for revenue previously received by them, but which have subsequently been taken over by the Central Government.¹⁸ Generally, assigned revenue grants

15. ibid.

16. Personal interview, Department of Local Government

17. V. Kanesalingam, op.cit., p.142

18. T. Leitan, op.cit., p.113

are paid to local authorities under three major items.

1. Refund of stamp duty on land transactions payable earlier to Village Councils and at present to Development Councils;
2. Grant in lieu of abolished revenue such as opium tax, which is received by all local authorities; and
3. Grant in lieu of motor vehicle licences received by Municipal, Urban and Town Councils.¹⁹

Earlier there was no intention to repay these amounts to local Councils and in 1952, when the revenue of motor vehicle licences, which was collected by the local authorities, was taken over by the Central Government, most of the councillors of local authorities were of the opinion "that it meant so far as the local authorities were concerned a diversion of a major source of revenue to the coffers of the Central Government".²⁰

However, it should be noted that the decision of the Government to refund local authorities, the licence duties collected by them after deducting the cost of collection was by all means justifiable.

iv. Capital grants or specific grants

The capital or specific grants generally take the form of assistance in major developments of local areas such as housing, slum clearance, water-supply, community centres, roads, sewerage and electricity distribution schemes. As Tressie Leitan has correctly pointed out:

"While all the recurrent grants also signify

¹⁹. ibid.

²⁰. Administrative Report of the Commissioner of Local Government, 1952, p. 101.

dependence on the Central Government and are a means by which central control can be exercised, capital grants are of special significance."²¹

As already pointed out with regard to all the other grants, it is evident that the Minister or the department has no discretion in varying the due amounts. However, under the specific grants prior to 1972, while a portion of the total available for these specific work was distributed among local authorities on the basis of road mileage and the number of electoral wards in the local area, the balance was assigned according to departmental and ministerial discretion. This gave the local authorities an opportunity on the one hand to submit the claims of their areas and to argue their case with the department and on the other hand to make promises to the constituents as to the work the council will carry out and in return seeking their vote in the next election. It was a significant feature that:

"persistent appeals for grants embodied in official addresses and memoranda presented to the Minister became the order of the day on official ministerial visits to local authorities."²²

For instance, in 1969, when the Minister of Local Government visited Jaffna District, the Chairman and the members of the Allaipiddy Village Council submitted the following memorandum to him.

"We therefore, list below some of the very urgent requirements and appeal that your Honour would be pleased to grant them easily."

"The above are our urgent needs and we submit them with our prayers for your kindest consideration and speedy action."²³

21. T. Leitan, op.cit., p. 115

22. ibid., p. 116

23. Department of Local Government Circular, ibid., p. 116.

As a result of these requests on this special official tour the Minister had given his sanction on the spot for works, such as construction and maintenance of village roads, official buildings and public libraries.²⁴ This system had its advantages as well as disadvantages. As for advantages it could be said that the formula of this was feasible. Whenever and wherever necessary the Minister could approve money for an essential construction on the basis of the specific grant. This actually gave life and hope to the local authorities. On the other hand for political rivals the scheme of distribution of this grant was the strongest weapon to withhold the grant. Also, as it was the Minister's discretion on certain instances, if the council which was seeking an allocation for an essential construction scheme consisted of councillors who belonged to the opposition party there was a "possibility" of not getting the requested amount. Hence, it could be said in one sense that the recommendation of the Committee of Inquiry on Local Government in 1972 suggested a better formula in this respect. The Committee of Inquiry was of the view that while 10% of the amount available for capital works could be reserved by the Minister for special needs, the other 90% should be allocated as a block vote to each of the twenty-two districts.²⁵

Hence, although the recommendation of this Committee of Inquiry was adopted this was restricted only to one item which prevailed during that time, viz, village works. Accordingly, this grant was allocated to every Village

24. *ibid.*

25. Report of the Committee of Inquiry on Local Government, S.P.No.7 of 1972, p.10.

Council as a general grant on the basis of road mileage and population. Meantime a very small sum was held in reserve for allocations as "special grants" for important village works.²⁶ On the other hand even after 1972 the earlier system of distribution continued on other works such as water supply schemes, playgrounds and such other matters. In this respect the local authority had to present an application through the Assistant Commissioner of Local Government to the Department of Local Government for these different grants. However, at present none of the two schemes is applicable as, on the one hand, the Development Councils were introduced in place of Town and Village Councils and on the other hand, since 1974, instead of the grant for village works, local authorities have received a general allocation from the decentralised budget for local development work, which is different from the specific grant.

However, as the Municipal Councils and Urban Councils are still receiving the specific grant on the basis of the earlier scheme, it could be said that the ministerial discretion which created an important form of control continues in the island.

v. Grants from the decentralised budget

The grant for village works which was included in the specific grant, discussed above, was transferred from the votes of the Department of Local Government to the decentralised budget, with its establishment in 1974. Since

26. Administrative Report of the Commissioner of Local Government, 1973/74.

the introduction of the decentralised budget, recurrent expenditure and capital expenditure for projects of a national character continued to be allocated under the expenditure heads of the relevant ministries and departments and allocations for local capital projects were provided under a new head of expenditure in the votes of Ministry of Planning, "the decentralised budget".²⁷ Discussing the implementation of the decentralised budget, Tressie Leitan states:

"Instead of financial allocations for local work being fragmented among the estimates of a number of departments, they were thus brought under one vote under the Ministry of Planning to be utilized in each district under the discretion of the Political Authority."²⁸

The system of District Political Authority introduced in 1973 was designed to organize rapid action in each district especially to expedite the food production programme of the Government. In each of the twenty-two districts a senior member of the Parliament - then the National State Assembly - was appointed by the Prime Minister as Political Authority.²⁹

Since the introduction of the decentralised budget, instead of the grant for village works, local authorities now receive a general allocation from the decentralised budget for local development work, the amount of the allocation being dependent on the decision arrived at by the Political Authority at the district level.

A noteworthy feature with regard to the

27. T. Leitan, op. cit., p. 42

28. ibid.

29. ibid.

decentralised budget is that this eased the methods of construction at the district level not only in respect to the budgets but also with regard to the planning schemes. Prior to the introduction of the decentralised budget the expenditure of Government funds took place within the strict confines of the national budget. However, after the introduction of the decentralised budget the amount granted from the Central Government for capital works within the local authority areas varied from Rupees five million to twelve million depending on the extent of the area and needs of the district.³⁰ Two important factors could be identified in this system. Firstly, the works which were to be carried out were selected at the sole discretion of the representatives of the people in the particular district.³¹ For instance, if a Rural Development Society, Cultivation Committee or an Agricultural Productivity Committee, being a local institution, proposes that an area which is within the Committee's purview needs a bridge, it had to forward its proposal to the District Political Authority. A preliminary estimate would be made with regard to the cost and, when it receives the approval from the District Political Authority, an allocation will be set aside for the said purpose.³² Hence, as the Report of the Presidential Commission on Development Councils observed, "with the introduction of the decentralised budgetary system, the district was at last provided with its allocation of funds".³³ Hence, it could be said that from the point of view of central control, the introduction of

30. Personal interview, Department of Local Government

31. *ibid.*

32. *ibid.*

33. The Report of the Presidential Commission on Development Councils, S.P.No.5 of 1980, p.13.

the decentralised budgetary system reduced the central control over development projects at the district level. Moreover, the implementation of the decentralised budget is essentially important with regard to a decision of devolution of the Government. Especially at present, as will be discussed in detail in the next Chapter, with the suggestions of the Government to introduce new Provincial Councils to devolve power to provinces as a solution for the prevailing ethnic problems in the country, a major role could be allocated to the decentralised budgetary system. This no doubt will pave the way for the provincial authorities to carry out most of their development projects without the intervention of the Central Government.³⁴

3.Loans

As pointed out earlier³⁵, in addition to grants from the Central Government, the local authorities are dependent on loan sanctions obtained from the Central Government. For instance, the following amounts were obtained as loans by the local authorities of the country between 1978 and 1981.

	1978	1979	1980	1981
	Rupees		Thousands	
Municipal Councils	*	7739.2	5045.8	6054.9
Urban Councils	2754.6	1662.1	4892.8	6347.6
Town Councils	1889.8	5585.3	5632.7	*
Village Councils	*	*	*	*

Table X - The amounts obtained as loans by the local authorities between 1978 and 1981

Source: Department of Local Government, Colombo

* - statistics not available

³⁴. This will be discussed in detail in Chapter Nine
³⁵. Supra, Chapter Nine.

The amount of grants and loans obtained from the centre emphasises the fact that the local authorities are heavily dependent on the Central Government, which has made them agents of the centre instead of forming a relationship of partnership between the Central Government and the local authorities of the country. This dependence of local authorities on Central Government grants and loans has enabled the Central Government to have authoritative powers over local councils. A few points could be mentioned in this respect which demonstrate the overwhelming power of the Central Government in controlling local authorities. Loans are generally obtained from the Local Loans and Development Fund established under the Local Loans and Development Ordinance as amended subsequently.³⁶ The Board of Commissioners, with the Deputy Secretary to the Treasury as its Chairman, is an incorporated body and is empowered to make loans to any authority for the purpose of any work of public utility which the authority may be authorised by law to undertake.³⁷ The Board of Commissioners consists of five members, all of whom are appointed by the Minister of Local Government.³⁸ According to the Local Loans and Development Ordinance, the local authorities must first obtain the ministerial sanction, if it needs a sum exceeding the income of the Council in the three years immediately preceding.³⁹ Generally, the total borrowing power of a local authority is limited to ten times its aggregate annual income⁴⁰, although the Minister can authorize this limit to be exceeded

36. Local Loans and Development Law, No. 9 of 1974

37. *ibid.*

38. *ibid.*, section 3

39. Urban Councils Ordinance, section 174, Town Councils Ordinance, section 172, Village Councils Ordinance, section 50

40. *ibid.*

if the loan is obtained fully or partly from the Government. The central interference through the loan sanction is also demonstrated by the fact that payments and other matters pertaining to loans are to be subjected to ministerial regulation and direction.⁴¹

It is clear that the loans are essential for local authorities to carry out the necessary functions, and this has provided a good opportunity for the Central Government to interfere with the affairs of local Councils. Thus, it could be said that as a result of the loan sanctions of the Central Government, the local authorities have to conform to the directions of the centre. Hence, when the grants and loans from the Central Government are considered as a whole, it could be said that they are essential for a local authority to function, especially due to the inadequacies of their independent revenue. However, it could be said that the Central Government is taking advantage of this opportunity and eventually controls the local authorities of the country. In addition to the various instances discussed above, the Central Government controls the local authorities, by means also of audit and budgetary controls, which are worthy to note.

III. The forms of central control

1. Audit

In Sri Lanka provision is made in the

41. Municipal Councils Ordinance, section 195, Urban Councils Ordinance, section 174, Town Councils Ordinance, section 173, Village Councils Ordinance, section 50.

Ordinances governing the local authorities for the auditing of their accounts. For example, the Municipal Councils Ordinance authorises the Auditor-General, who is a Government official appointed by the Head of State⁴², to examine all books, deeds, contracts, accounts, vouchers etc. and to submit a monthly report, as well as an annual report, of his findings to the Council with a duplicate to be placed before the Minister to disallow any items which are contrary to law and to surcharge these items or those persons who were responsible for them.⁴³ The Village Councils Ordinance provided for the annual auditing of the accounts of all Village Councils by the Auditor-General or an officer appointed by him.⁴⁴ Under the Development Councils Act the provisions of Article 154 of the Constitution relating to the auditing of accounts is to apply in relation to the audit of accounts of each Development Council.⁴⁵ According to the Ordinances the accounts of all Urban and Town Councils have to be audited during each half of the financial year while under the Development Councils Act the Auditor has to submit a monthly report of his audit to the Council and also an annual report of such audit to the Council with a duplicate of the annual report to the Minister.⁴⁶ There is no statutory provisions for audit by the Auditor-General of Urban and Town Councils, although according to the Ordinances they have to be audited during each half of the financial year.⁴⁷ However, since 1972 all the local authorities are audited by the

42. The Constitution of the Republic of Sri Lanka, 1972, Article 81, The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Article 154

43. Municipal Councils Ordinance, sections 219-226

44. Village Councils Ordinance, section 84(2)

45. Development Councils Act, section 51

46. *ibid.*, section 52

47. Urban Councils Ordinance, section 181.

Auditor-General as it is provided under the Constitution which is continued even after 1978. Article 90(1) of the 1972 Constitution provided:

"The Auditor-General shall audit the accounts of all departments of Government and the accounts of all local authorities and of public corporations and of any business or other undertaking vested under any written law in the Government."⁴⁸

It should be noted that in Sri Lanka there is no provision for the local authorities to appoint professional auditors for Council auditing. In England, however, until 1972 it was the accepted principle in Whitehall that all local authority accounts ought to be audited by the district auditors appointed by and responsible to the Secretary of State for the Environment.⁴⁹ Although the law allowed certain accounts of Borough Councils to be audited by professional auditors, this was mostly discouraged in Whitehall. "However, the Act of 1972" says Garner, "allows County Councils and District Councils to choose between district audit and audit by an 'approved auditor'; District Councils may make the choice for parishes or communities within their district and any such authority may change their mind subsequently."⁵⁰ This indicates that in both the countries, however, the auditors are appointees of the Central Government or persons approved by the centre. Moreover, according to the changes made in England under the Local Government Finance Act 1982, it could be said that the Government has taken a further step to centralise the auditing of local authorities. Under the Local Government

48. The Constitution of the Republic of Sri Lanka, 1972, Article 90(1)

49. Local Government Act of 1972, section 156

50. J.F. Garner, op.cit., p. 454.

Finance Act, 1982, local authorities in England and Wales are now subjected to the "Scottish system" of audit. Accordingly, an Audit Commission comprising sixteen members appointed by the Secretary of State is now responsible for local government audit. Discussing this new system, Tony Byrne mentioned:

"It appoints auditors for local authorities, drawing on the District Audit Service or, for forty percent of Councils, from the private sector: local authorities no longer have a choice."⁵¹

The most noteworthy feature under the auditing of local authority accounts is that the Central Government through the auditor-General has the power of audit surcharges which could be introduced as a strong means of control. According to the Municipal Councils Ordinance:

"Every auditor of the municipal accounts of a Municipal Council acting in pursuance of the powers conferred upon him by this Ordinance or any other enactment shall disallow every item of the municipal accounts which is contrary to law and surcharge the same on the person making or authorising the making of the illegal payment."⁵²

Accordingly audit surcharges are imposed by the Auditor-General on local authorities each year and even the Municipal Councils of the country have been affected by this. For example, in 1957 seven members of the Jaffna Municipal Council were surcharged a sum of Rupees four thousand nine hundred and five as a result of their non-acceptance of tenders for the lease of trade-stalls in the market.⁵³ In 1962 a sum of Rupees sixty four thousand five hundred was surcharged from the Galle Municipal Council which was claimed to be spent on unauthorised cables.⁵⁴

51. Tony Byrne, Local Government Law, 3rd edition, Penguin Books, 1985, p. 218

52. Municipal Councils Ordinance, section 226(1)

53. Administrative Report of the Commissioner of Local Government, 1957, p. 9

54. Administrative Report of the Commissioner of Local Government, 1962, p. 6.

However, the person aggrieved by a surcharge is entitled to be heard by the Auditor. If he is not satisfied with the Auditor's decision he could appeal thereafter to the Minister. The Municipal Councils Ordinance provides:

"Before making any disallowance or surcharge against any person, the Auditor shall afford an opportunity to such person to be heard or to make any representation with regard to the matter which he may think fit, and shall in the event of his making such disallowance or surcharge furnish such person in writing, on application being made to him for that purpose, with the reasons for his decision in respect of such disallowance or surcharge.

Any person aggrieved by any such disallowance or surcharge may within fourteen days after the date of the decision of the Auditor being communicated to him appeal therefrom to the Minister."⁵⁵

It could be said that auditing is the surest way to maintain the financial integrity of local authorities. Although this paves the way for the Central Government to interfere with local authority affairs, if it is carried out within the limits of the granted power it could be said that audit is essential. However, in Sri Lanka there are weaknesses in this negative form of control. For example, in some local authorities by the time the audit queries are raised officials had been transferred out of the Councils concerned.⁵⁶ Another drawback to the effective operation of audit as Tressie Leitan points out is the failure of Councils to bring their accounts up to date.⁵⁷ The internal audit unit was established in the Ministry of Local Government in 1968, especially to overcome these weaknesses.⁵⁸ This examines the accounts of local authorities

55. Municipal Councils Ordinance, sections 226(2) and 226(3)

56. T. Leitan, op.cit., p.125

57. ibid., p.125

58. Administrative Report of the Commissioner of Local Government, 1968, p.5.

as well as acts as their adviser on matters pertaining to accounting procedure.

In addition to audit surcharges in Sri Lanka financial controls are also imposed through budget controls.

2. Budget control

It must be noted that, on the one hand, only Urban and Town Councils are subject to budget control and, on the other hand, the decision of control solely depends at the discretion of the Minister. According to the local authority Ordinances, the annual budgets of all Urban and Town Councils have to be communicated to the Commissioner of Local Government and all reports, particulars and explanations are supplied, if they are called for.⁵⁹ Moreover,

"if in the opinion of the Minister the financial position of any Urban Council is such as to make the control of the Minister over its budget desirable, the Minister may direct that in the case of such control, the annual budget and any variations thereof shall be subject to the sanction of the Minister."⁶⁰

Generally, in practice the Commissioner of Local Government imposes a similar control in respect of Town Councils.⁶¹ It could be argued at this point that the budgetary controls are decided in accordance with the Minister's "opinion" and his "discretion".⁶² This could lead to the unfair imposition of budget controls and certainly could be interpreted as an instance where the local authorities have become agents of the centre.

59. Urban Councils Ordinance, section 199, Town Councils Ordinance, section 198

60. Urban Councils Ordinance, section 200

61. Town Councils Ordinance, section 199

62. Urban Councils Ordinance, section 200.

However, compared with the financial controls imposed on English local authorities it is clear that the financial controls over Sri Lankan local authorities are not overwhelming. Especially, the powers of the Central Government in England under the 1984 Rates Act to "rate-cap" local authorities could be contrasted as an example in this respect. Under this Act the Government was granted the power to control the money any Council can spend regardless of the effect upon local services.⁶³ Furthermore, if a Council chooses to appeal against being ratecapped, the Government can fix the exact amount the respective Council should spend.⁶⁴ The "rational" Hackney budget for the financial year 1985-86, tabulated below could be introduced as an example in this respect.

Main budgeted services	Planned priorities	Past spending	Planned allocations	Cuts	Required allocations
	%	£000	£000	£000	£000
Community development	1.2	2871	2495	-376	3263
Economic development and Employment	4.7	1285	1461	+176	1461
Health and consumer rights	5.1	2503	3138	+635	3138
Housing services	25.9	32220	28480	-3740	37051
Leisure services	4.9	10662	8963	-1699	11277
Planning and transport	4.0	2312	2527	+215	2527
Police	1.3	82	80	-2	80
Policy and resources	13.0	4856	5099*	+243	12270
Public services	9.8	12918	10862	-2056	13408
Social services	26.4	31561	26570	-4991	32682
Women's rights	0.8	68	150	+82	150
Staffing and equal opportunities	2.9	2615	2648	+33	2693
All services	100.0	103953	92473	-11480	120000

Total available money £92473 (Central Government limit)

* 5099 was given as a maximum allocation

Table XI - The rational Hackney budget

Source: Local Government Review, Volume 149, No. 21, p. 399

63. Rates Act 1984

64. ibid.

As the above table illustrates, the object of the Government was to hold down rates of local authorities. In this respect Ian McCullum, a former Chairman of the Association of District Councils and a member of the Conservative Party, said of the Rates Act:

"these plans represent State intervention in local affairs on a scale unprecedented in this country."⁶⁵

Although many Labour Councillors refused to fix a rate level⁶⁶ the Government is going ahead with their plans as Mr. Patrick Jenkins, the Secretary of State for Environment, is to announce the rate limitation for 1986 at the end of July 1985.⁶⁷ From the point of view of the Government, due to the ratecapping the rate-payers of London had been saved £220 million and those in the rest of the country £110 million.⁶⁸

Moreover, the attempts that have been, and are being, made to reduce the amounts of capital receipts a local authority could spend in a year itself demonstrate, on the one hand, the powers of the Central Government to control local authorities through the financial structure and, on the other hand, comparatively, the Sri Lankan local authorities are not facing overwhelming financial controls.

Concluding remarks

However, it could be pointed out that due to the lack of sufficient independent revenue the relationship between the Central Government and local authorities in Sri

65. The Times, 6th March 1985

66. The Times, 17th December 1984

67. The Times, 15th July 1985

68. ibid.

Lanka is of agency rather than one of a partnership. As pointed out already with regard to the financial structure of local authorities in Sri Lanka, it could be said that the main fault in this respect is due to the lack of sufficient independent revenue for the Councils to carry out their functions. For this reason the Councils have to depend mostly on grants and loans from the Central Government. However, the most characteristic feature, which is typical to most countries, especially in Asia and Africa, is the use of outdated statistics as the base of taxable income as well as the method of allocating grants. Moreover, as has already been discussed, inefficiencies of local authorities, especially in updating the essential statistics, and inadequacies of the Central Government, such as the insufficient number of officers for the valuations and inquiries could be pointed out as major drawbacks for the improvement of financial relations between the Central Government and the local authorities of Sri Lanka. Hence, certain amendments are essential on these grounds. Especially with regard to a devolution of the Government, it is essential that the local authorities should have sufficient independent revenue to carry out their functions. Hence, it is essential to improve the local revenue. This could be done by collecting the rates regularly, updating the statistics annually and by introducing licence duties on a number of lucrative trades which are at present exempted, such as the manufacture of readymade garments,

electrical goods, tailoring establishments, textile trading, medical drug stores, milkbars, photographic studios, private hospitals and nursing homes and so on.⁶⁹ Also it is necessary to improve the statistics of the Department of Local Government by appointing specialized officers for valuations, inquiries etc. The most important item in these amendments is to update the essential statistics and to use the present formulas in levying taxes by the local authorities and also for the grants which are supplied by the Central Government. With regard to the financial controls over local authorities, although in certain instances, as pointed out, there is too much power allocated to the Minister to carry out functions solely at his discretion, it is difficult generally to regard this as overwhelming. It must not be forgotten that still there is 'corruption in most of the local authorities and the only means of "keeping an eye" on these activities is through the audit and budgetary controls. If there is no such intervention from the Central Government in local authority affairs this will mean that the local Councils are miniature sovereign bodies within the island. However, as has been pointed out earlier,⁷⁰ it is essential that there must be supervision over the affairs of local authorities. Although this means that the financial controls are essential, according to the Sri Lankan experience as has been pointed out it is necessary to make certain amendments with regard to the discretionary powers of the Minister of Local Government.

69. Report of the Committee of Inquiry on Local Government, S.P.No.7 of 1972, p.18

70. Supra, Chapter One.

PART THREE

THE ERA OF DECENTRALISED ADMINISTRATION

Chapter Nine

The Development Councils Act of 1980: the decentralisation of administration and devolution of authority;

Part One: The background analysis

In September 1980 the Development Councils Act was enacted to establish Development Councils in place of the former Town and Village Councils of the island. Introducing the Development Councils Bill, the Prime Minister, who is also the Minister of Local Government, Housing and Construction, stated that these Councils are being introduced, "with a view to devolve authority on the Development Councils and to decentralise the administration."¹ It was specified in the Act that it is:

"to provide for the Constitution and composition of Development Councils for the purposes of accelerating development, to specify the powers, duties and functions of such Councils, to provide for the Constitution and composition of Executive Committees of Development Councils, to specify the powers, duties and functions of the District Ministers in relation to such Councils and Committees and to provide for all matters connected therewith and incidental thereto."²

Thus, the expectations of the Government by the introduction of the Development Councils were to decentralise the administration and to devolve authority to the districts. According to the detailed discussions in the previous Chapters, it could be said that in Sri Lanka the administration was highly centralised.³ Moreover, it was apparent that the local government institutions were more or less under the control of the Central Government.

1. Parliamentary Debates, September 1980

2. Preamble to the Development Councils Act, No. 35 of 1980

3. Supra, Chapter Five.

Thus, under the Development Councils Act, it was intended to decentralise the administration, by establishing twenty-four Development Councils throughout the island and empowering them to deal with subjects such as: agrarian services, agriculture, animal husbandry, co-operation development, cultural affairs, education, employment, fisheries, food, health services, housing, irrigation works (which are not of an inter-district character), land use and land settlement, rural development and small and medium scale industries. Prior to 1980, it should be recalled that all these services were carried out by the Central Government and the local authorities had no power to deal with any of these matters.

As a result of this decision of the Government, the Development Councils Act came into force and Development Councils were set up in all administrative districts with effect from 1st July 1981. This new legislation created a new type of Council in place of the former Town and Village Councils, changing the entire structure of local government which had lasted ^{for} over a century.

The introduction of the Development Councils, as will be apparent later,⁴ was not a successful attempt by the Government to decentralise the administration of the country. A number of points could be mentioned to support the argument that the Development Councils which were established under the Development Councils Act, No. 35 of 1980, are no more than local units of administration that would act more or less

4. Infra, Chapter Ten.

as agents of the Central Government. Nonetheless, a detailed examination of these Councils shows that if certain elements are removed from these institutions, the structure of the Development Councils could be re-organised to establish a system which would not only decentralise the administration, but would also provide regional autonomy throughout the island, a step which may pave the way for a cessation of the increasing agitation between the majority Sinhalese and the minority Tamils of the island.

It is significant to note that the establishment of the Development Councils in 1981 was not the first attempt to decentralise the administration of the country. An examination of the early structure of administration reveals that the foundation for decentralisation was laid for the first time in the island some sixty years ago. However, it is fascinating to note that none of the different Governments since 1920 was successful in establishing District or Provincial Councils for the purpose of decentralising the administration of the country.

As will be discussed in detail in this Chapter, various reasons were given for these failures of Governments in establishing Provincial or District Councils. However, according to a detailed examination of these proposals it could be questioned as to whether there was a general resentment to the idea of decentralising the administration and devolving authority on Provincial or District Councils. It has been observed that there were differences in the

attitudes of the respective Governments to the decentralisation of the administration during colonial and the independence periods. Moreover, it is also apparent that the attempts to introduce Regional Councils during the independence period were motivated by a desire to find a solution to the ethnic rift between the majority Sinhalese and the minority Tamils of the island. Furthermore, as will be discussed in greater detail in the next Chapter, it is clear that the establishment of Development Councils in 1981 for the purpose of decentralising the administration has not been a success as expected. Nonetheless, the proposals of the Round Table Conference held in 1984, to establish Provincial Councils to grant autonomy especially to the Tamil minority in the Northern and Eastern provinces of the country, turned into another unsuccessful attempt to devolve authority to local Councils of the island. Consequently, it is necessary to examine the historical experience of successive attempts to introduce Regional or Provincial Councils in the island, to analyse the reasons for these failures of the Government in decentralising the administration of the country. This will provide the background for us, to examine the success and failures in the establishment of Development Councils which will be discussed in the next Chapter.

Accordingly, an attempt will be made in this Chapter to analyse the objectives of the Colonial Government during the pre-independence period in establishing Provincial Councils and the various political

attitudes during the recent period towards decentralising the administration and devolving authority on Regional Councils. This will enable us to analyse the general problems the Government had to face at different times in attempting to decentralise the administration. Thus, in Part I of this Chapter, the developments during the period 1928 and 1948 will be discussed with special reference to the proposals of the Select Committee and the Donoughmore recommendations, followed in Part II by an analysis of the developments in decentralising the administration and the various problems the Government had to face in this context, between the years 1948 and 1980. The establishment of the Development Councils in 1981, their structure and functions and, especially, the failure to decentralise the administration effectively under the Development Councils Act will be examined in detail, with some comparative reference to India and Tanzania, in Chapter Ten.

I. The period between 1928 and 1948

The development of local government in the island since the mid-nineteenth century, which was discussed in detail in Chapters Three and Four, demonstrates that most of the local government institutions established in the island were only local units of administration that acted more or less as agents of the Central Government.⁵ However, the various attempts made by the Government since 1928 to establish Provincial/Regional or District Councils in the island, and the failures of these attempts, demonstrate vividly, on the one hand, the desire of the Government to decentralise the administration and, on the other hand, the difficulties

5. Supra, Chapters Three and Four.

that the different political parties which came into power had to face in devolving authority to local Councils. However, it is interesting to note that these attempts reflect the fact that a continuing need was felt to devolve authority to local Councils.

During the period under review four attempts were made to establish Provincial Councils in the country. The Select Committee on Local Government, appointed in 1926, the Donoughmore Commission of 1927, the Executive Committee of Local Administration in 1940 and Mr. S.W.R.D. Bandaranaike, the Minister of Local Government, in 1947, made several attempts to achieve the aim of decentralising the administration by establishing Provincial or Regional Councils. However, it should be noted that none of these recommendations was in fact implemented. Nevertheless, the most fascinating feature to be identified in this context was the nature of the Regional Councils that were proposed to be established as authorities to decentralise the administration. Hence, it is necessary to analyse the type of Councils proposed by these various committees during the period under review.

1. The type of Councils proposed by various committees during the period 1928 to 1948

i. The suggestions of the Select Committee on Local Government

An examination of the various attempts to

create a second tier of authority in the system of local government reveals that, the Select Committee appointed in March 1926, was the first official body to recognize the need for a supervisory authority in each district. This Committee was appointed by the Legislative Council:

"to consider the working of Ordinances relating to District Councils, Local Boards, Sanitary Boards, Village Committees and to make such recommendations as will make it possible to extend local self-governing institutions throughout the country."⁶

As discussed in detail in Chapter Three and Four, the Village Committees, Local Boards and Sanitary Boards were introduced in 1871, 1876 and 1892 respectively. However, as discussed in Chapter Four, although the Local Government Ordinance, No. 11 of 1920 was enacted in 1920, only eight Urban District Councils were established under this Ordinance. Hence, the main purpose of this Committee was to consider the working of these District Councils and to make recommendations for these Councils to function as supervisory authorities located in districts.⁷

According to the Select Committee's recommendations:

"Each District should have a District Board with the Government Agent or Assistant Government Agent as ex-officio Chairman."⁸

These District Boards were to carry out the following functions.

- a. Supervising and co-ordinating the work of local governing institutions, except Urban District Councils in their areas;
- b. apportioning grants-in-aid from the Central Government;

6. C.O. 57/224, Final Report of the Select Committee on Local Government, S.P. No. 36 of 1928, p. 1

7. *ibid.*, p. 2.

- c. approving the budgets of the local authorities;
- d. inspecting and auditing accounts of local authorities;
- e. supervising of public works undertaken by Town Committees and Village Committees;
- f. co-ordinating the work of the district;
- g. carrying out the functions now performed by the Central Government under various Committees, such as the District Road Committee, the Education Committee and the Irrigation Committee; and
- h. carrying out other duties now performed by various departments in the administration and improvement of the district.⁸

It is thus clear that these District Boards were to be established as supervisory Boards over the Village Committees, Local and Sanitary Boards. For instance, the Select Committee in their Report stated:

"District Boards should not undertake any collection of revenue or impose any new form of taxation in the district area. The functions of a Board being one of co-ordination, supervision and administration of the district, it should by its Constitution become an administrative body."⁹

An interesting feature to be noted with regard to the recommendations of the Select Committee was the enthusiasm in introducing democratic element to the District Boards in the country. For example, in relation to the composition of the District Boards, the Select Committee was of the opinion:

- "District Boards should be composed of
- i. representatives elected from the Town Committees;
 - ii. representatives elected from the Village Committees; and
 - iii. nominated members as provided in paragraph(d)."¹⁰

Paragraph(d) provided:

"There should be not more than one-third of nominated members on each Board. Such nominated members should be selected to represent interests that are not adequately represented on the Board

8. ibid., p.5

9. ibid., para.16

10. ibid., para.17.

and also to supply representatives with special knowledge and experience who can assist the Board in dealing with subjects as education, public health, public works, agriculture and finance. These experts can be subsequently nominated to the various statutory sub-committees that should be constituted under a District Board."¹¹

The Select Committee's recommendations was that the elected members should constitute a majority in District Boards. The Select Committee submitted its report in August 1928. However, it must be noted that none of the above mentioned recommendations were implemented. This was mainly due to the appointment of a Commission in 1927 under the Chairmanship of the Earl of Donoughmore to report on the working of the existing Constitution and to consider any proposals for revision, by the Secretary of State for Colonies. Moreover as will be apparent later, there was no possibility in implementing the recommendations of the Select Committee as the suggestions of the Donoughmore Commission in this respect differed widely from the recommendations of the Select Committee.

ii. The Donoughmore recommendations

The suggestions by the Donoughmore Commission to decentralise the administration by establishing Regional Councils were far wider in scope than the recommendations of the Select Committee.¹² The Donoughmore recommendations pointed out the need for Provincial Councils in Ceylon. According to the Donoughmore Commissioners:

¹¹. ibid.

¹². The Report of the Donoughmore Commission, Cmd. 3131.

"We share . . . the feeling expressed to us alike by official and unofficial witnesses that some regeneration and extension is urgently needed. We were glad to hear that the problem of local administration has been engaging the attention of a Select Committee of the Legislative Council, but we fear that their deliberations have now been interrupted. . . . As an ultimate aim of policy, there is obviously much to be said in favour of a future decentralisation of Government upon elected or partially elected local bodies created for the purpose."¹³

The recommendations of the Donoughmore Commission were primarily for the creation of co-ordinating bodies to which certain administrative functions of the Central Government were to be delegated.¹⁴ For this purpose it was suggested that Provincial Councils should be established in the country. Thus the Donoughmore Commission was of the opinion:

"The argument in favour of the establishment of a Provincial Council in each Province is that such a scheme might result in a large part of the administrative work now been carried out in the Legislative Council coming into the hands of persons permanently resident in the country districts and thus more directly in contact with their needs, in the relief of the departments of the Central Government of more detailed work and in their being thereby set free to consider and advise on larger affairs of the country; in the special views of the different races predominant in the different parts of the island having effect in the administration of these parts, in members of the growing body of politically-minded persons in the country being placed in an honourable position to render real assistance in the administration and in an increase in knowledge and capacity of the representative of lesser local bodies who might be summoned to sit on the Councils."¹⁵

With regard to the constitution, powers,

13. ibid., pp. 114-115

14. ibid., p. 118

15. ibid.

duties and financial arrangements of Provincial Councils, the Commission did not offer any direct recommendations. Instead, the Donoughmore Commission made many suggestions for consideration by the Central Government.¹⁶ It is clear that the intentions of the Donoughmore Commission were to have elected members in these Councils, so that the inhabitants would have the power to carry out the duties with very little or no influence from the Central Government. On one occasion, for instance, the Commission had raised the question whether the Government Agent should be the Chairman and the Executive Officer of the Council and at the same time it was stressed that if he was to be, then it should be only for the first year and he shall not have a vote.¹⁷ This itself signifies that the intention of the Commission in introducing Provincial Councils was fully to decentralise the administration and to devolve authority on the inhabitants throughout the country.

However, these recommendations to establish Provincial Councils faced a most unfortunate outcome as the Governor of Ceylon, after considering the recommendations, thought that the scale of expenditure would be higher, if the Provincial Councils were to be established, than what Ceylon could afford at the relevant time¹⁸, while the Secretary of State thought that long experience and traditional methods would have to be sought to solve this problem and it would be better for this decision to be postponed for some time.¹⁹

16. ibid.

17. ibid.

18. Despatch dated 2nd June 1929 to the Secretary of State for the Colonies from the Governor relating to the Constitution, S.P.No.34 of 1929, para.61

19. Despatch dated 10th October 1929 from the Secretary of State to the Governor, S.P.No.34 of 1929, para.23.

Hence, in 1931, when the Donoughmore Constitution was inaugurated, the recommendations for the establishment of Provincial Councils were not implemented.

iii. The proposals of the Executive Committee

In 1940, the Executive Committee for Local Administration, which was established under the Donoughmore Constitution and which was in charge of the local government affairs of the country, had prepared a report on the proposals to establish Provincial Councils throughout the island. These proposals more or less presented the intention to establish Provincial Councils according to the Donoughmore recommendations and mainly suggested the functions which such Councils should carry out. Hence, this could be seen as an extension of the recommendations made by the Donoughmore Commission in 1929. The Executive Committee suggested that making the members of the Legislative Council in each province also members of the Provincial Councils would form a connecting link between the central and provincial administration. Also, another suggestion was made for the appointment of representatives of the Municipal Councils, Urban District Councils and Village Committees as members of the Provincial Councils. The suggestion of the Executive Committee of Local Administration indicated that the Provincial Councils should have supervisory, directory, and advisory powers to control, co-ordinate and exercise the

functions of a province. However, it should be noted that the recommendations of the Executive Committee were brief and there was no mention with regard to the relationship between the Provincial Councils and the Central Government. The Government had considered this proposal as one to be implemented based on the recommendations of the Donoughmore Commission. Nonetheless it must be noted that these recommendations were not implemented, and it was pointed out by the Government authorities that the outbreak of World War II had disrupted the pursuit of the subject.²⁰

iv. The proposals made in 1947

From 1940 there were various attempts to establish Provincial or Regional Councils, mainly to decentralise the administration of the country. Two basic features were prominent in these various schemes which were introduced from time to time. Firstly, the type of Councils to be established were either Provincial Councils based on each province or Regional or District Councils for each district. Secondly, most of the Councils were to have the Government Agent as the Chairman.²¹ The Provincial Councils were to have supervisory powers over the other existing local government institutions, mainly over the Village Committees, such as to scrutinize the budgets, consider the annual reports, approve the resolutions passed by the Village Committees and prescribe the form of estimates and accounts of Village Committees.²²

20. V. Kanesalingam, A hundred years of local government in Ceylon, 1865-1965, Modern Plastic Works Publishers, 1971, p. 155

21. ibid.

22. ibid.

Again the link between the Central Government and the Provincial Councils was the Government Agent, who was the chief co-ordinating officer in the province.²³ However, it is interesting to note that, although there were several recommendations to establish local government institutions based on each province or district for the purpose of decentralising the administration, no measures were taken by the Government to introduce these local government institutions.

It was in this atmosphere that again an attempt was made to establish Provincial Councils in the island. This was mainly due to the keen interest taken by the then Minister of Local Administration Mr. S.W.R.D. the Bandaranaike. He proposed/creation of Provincial Councils according to the recommendations of the Donoughmore Commission. For instance, in 1945, while moving the first reading of Local Government Service bill, Mr. Bandaranaike stated:

"You will remember Sir, that the proposals made by the Donoughmore Commission with regard to local self-government, a subject in which they rightly, if I may say so, displayed a great deal of interest, have been followed up and there is only one step remaining to be taken; that is the establishment of Provincial Councils more or less that on the analogy of the English County Council, having certain powers of the County Council but also possessing more powers than the County Council in England. In other words decentralisation of the administration to a great extent in the Provincial Councils - the coping stone, if I may call it, of the structure of local self-government in Ceylon - is the

23. Supra, Chapter Five.

only step that remains to be taken."²⁴

These Councils were to consist of elected members, as suggested by the Donoughmore Commission in 1931. Moreover, the Councils were to have wider powers to deal with matters such as health, sanitation, communication, lighting, housing, water, agriculture and irrigation in the provinces. Hence, the proposals undoubtedly indicated that the intention of the Government was to introduce democratic decentralisation to the country. Furthermore, this was clearly indicated by Mr. Bandaranaike, in 1947, while addressing a public meeting.

"It is proposed before long to introduce Provincial Councils functioning over a province or a revenue district whose chief duty will be to supervise, co-ordinate and (in varying degrees) to control the work of all local bodies in their areas. These bodies will to some extent correspond to County Councils in England, but, will have much wider powers and duties in various directions. In fact it is contemplated that they will, while preserving certain powers of Central Government, in these matters deal in their provinces and districts with health and sanitation, communication, lighting, housing, water, agriculture, irrigation, etc."²⁵

However, although a Bill was drafted to establish Provincial Councils according to the recommendations of the Donoughmore Commission, the Bill did not receive approval from the Parliament.

The ultimate result of all these attempts was that, on the eve of independence, there was no such local government institution established for the purpose of decentralising the administration. Instead the local government system of the country comprised the institutions

24. Hansard, 23rd January 1945, p. 4031

25. A speech made by the then Minister of Local Administration, Mr. S. W. R. D. Bandaranaike in March 1947.

of Municipal Councils, Urban Councils, Town Councils and Village Committees.

However, with regard to the establishment of Development Councils two interesting features could be noted. On the one hand it appears that ^anumber of Committees had recommended the establishment of Regional or Provincial Councils for the purpose of decentralising the administration of the country. On the other hand it is apparent that the Government had taken no measures to implement any of these proposals. Moreover, an analytical examination of these various proposals discussed above reveal that there has been no strong resistance either from the Members of Parliament or from the general public for the establishment of the District Councils. Furthermore, it is obvious that the reasons given by the Government for the non-implementation of these Councils were very minor factors, considering the important nature of the establishment of an institution such as the District Councils. Under these circumstances, a question arises as to whether the Government was really reluctant to decentralise the administration of the country by establishing District Councils? Consequently, it is necessary to examine the post-independence period to analyse the reasons for the non-implementation of the District Councils in the island.

II. The aftermath of independence

The most notable feature with regard to the

post-independence period was the rising participation and interest of the politicians with regard to the implementation of District Councils in the island. In relation to the political change in the country since the late 19th century, it could be said that this change occurred in a series of stages. Discussing the politics in Ceylon, Professor Kearney points out five stages of development.

- 1.1880-1915 - Social change and the growth of elite political consciousness
- 2.1916-1930 - Elite politics and constitutional evaluation
- 3.1931-1947 - The emergence of popular elections and the prelude to mass politics
- 4.1948-1959 - Rising mass participation, electoral competition and the popularization of policies
- 5.1960 onwards
 - The consolidation and institutionalization of mass politics²⁶

Consequently, it could be said that since independence several political parties had emerged and the most striking feature of these parties was the enthusiasm they had taken over the establishment of District Councils. Moreover, it is important to note that the political parties had suggested this implementation purely on ethnic grounds. According to Professor Kearney:

"The trend of politics since independence has been towards a vertical integration of ethnic communities, reducing or blurring internal class, caste, and regional distinctions, but creating a sharper horizontal distinction between communities as each of the major ethnic groups has tended to draw into itself and emphasise its own language, religion and culture."²⁷

Since independence the responsibility of re-organizing their own language, religion and culture was

26. Robert N. Kearney, The politics of Ceylon (Sri Lanka), Cornell University Press, 1973, p. ix

27. ibid., p. 99.

the main motto of the Tamil population in the island. For instance, in launching the party the Federal Party's founder mentioned in the House of Representatives:

"As long as there are activities directed against communities and as long as those communities are minority communities, they must, for their self-protection bind themselves in a communal way."²⁸

Accordingly it could be argued that since 1948, this has been the attitude of the Tamil politicians and this could be clearly seen in the proposals they have been suggesting for the decentralisation of the country. Meanwhile, irrespective of the failure of all these attempts under the Colonial Government to introduce Provincial Councils, every political party coming to power at different times had in fact obtained a mandate in its election manifesto, a mandate to set up Regional or Provincial Councils. The interesting point in this episode was that these attempts were made primarily in the search of a solution to the growing unrest between the Sinhalese majority and the Tamil minority of the country. Especially during 1950s and 1960s, the proposals to establish Provincial Councils were put forward mainly as a measure to grant regional autonomy for the minority Tamils, who are the majority in the Northern and the Eastern provinces of the country. Hence, before we analyse the various attempts by Governments of the different political parties to establish Regional or Provincial Councils in the country, it is necessary to consider the importance of decentralisation to the Tamil minority of

28. Ceylon Parliamentary debates, 10th December 1948, col. 491.

the country.

1.The Tamil minority of Ceylon

As discussed earlier,²⁹ the country, with its long-standing traditions, is a multi-racial and multi-religious nation. It has been inhabited by the Sinhalese, Tamils, Moors, Malays and Burghers for number of centuries since the 6th century B.C. According to the ancient chronological evidence, it is said that Prince Vijaya arrived in 6th century B.C. and that this was the beginning of the Sinhalese community in the island.³⁰ Of the minority groups residing in the island, the Tamils are the majority, numbering 1,871,531³¹, a percentage of 12.6%, out of the total population of 14,850,001.³³ The composition of the population according to the race, tabulated below, shows the comparative numbers not only of the majority Sinhalese and the minority Tamils, but also of the other minorities in the country.

Sinhalese	10,985,666	73.98%
Tamils - Ceylon Tamils	1,871,535	12.6%
Indian Tamils	825,233	5.56%
]-->18.16%
Moors	1,056,972	7.12%
Malays	43,378	0.29%
Burghers	38,236	0.26%
Others	28,981	0.20%

Table XII - The composition of the population according to race - 1981 census

Source: Statistical Abstract, 1982

29. Supra, Chapter One

30. Wilhelm Geiger, The Mahawamsa, Government Publication, 1960

31. Census 1981, Statistical abstract, Government Publication, 1982

32. ibid.

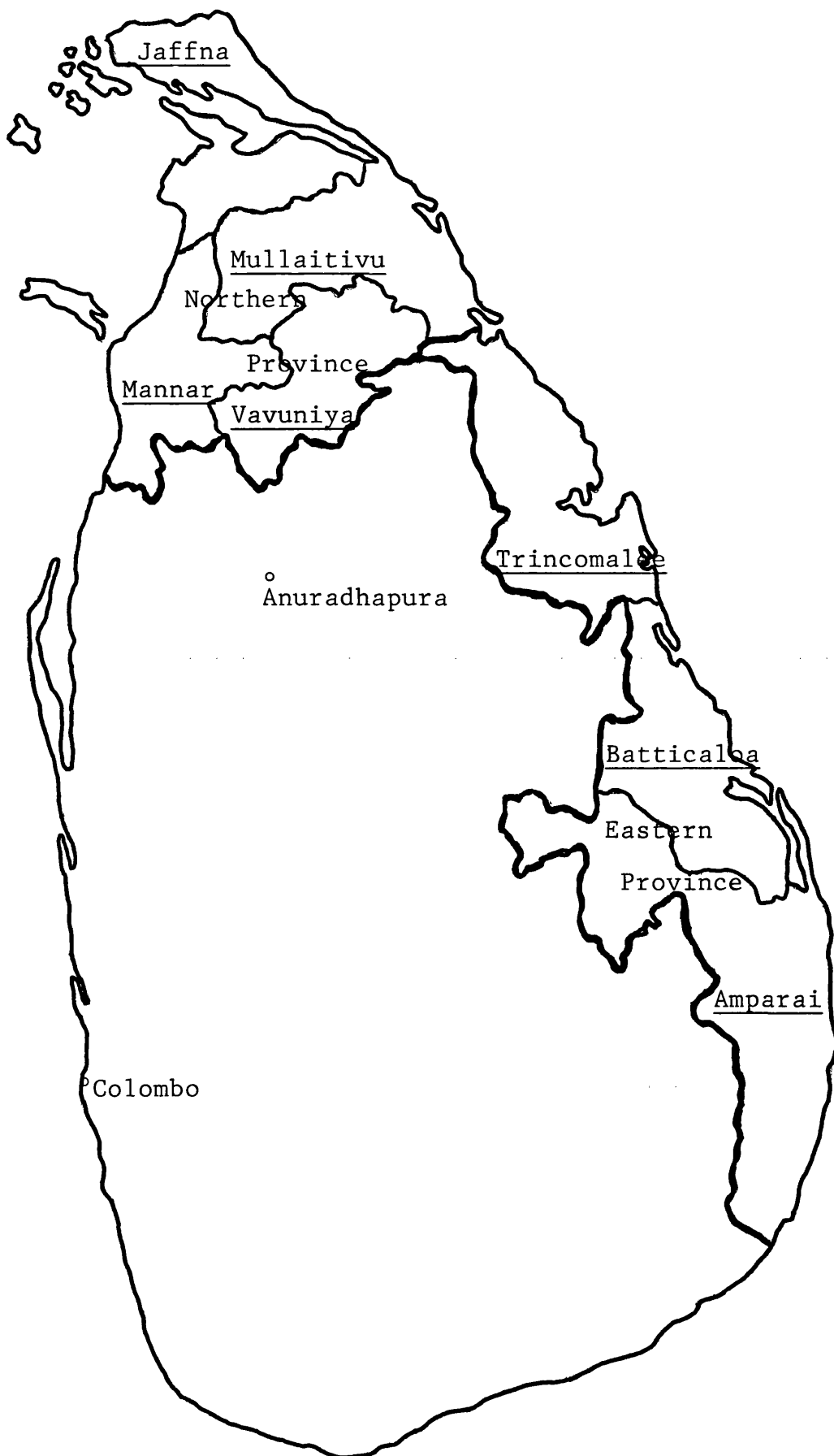
33. ibid.

Out of the total population of Tamils only 792,246 live in Jaffna, the Capital of the Northern peninsula of the country. The others live in the areas of Mannar, Vavuniya and Mullaitivu of the Northern Province, the Eastern Province, Colombo and even in other parts of the island among the Sinhalese people. In particular the Indian Tamils reside in the hill country at the centre of the island, where the Tea estates are on which most of them work as labourers. They trace their origins to the mainly low-caste people recruited from India to work in the estates in the late nineteenth and early twentieth centuries. The following table is a clear illustration of the fact that the entire Tamil population does not reside in the Northern and the Eastern provinces of the country.

Northern Province	Total	Sinhalese	Tamils	Moors	Indians	others
Jaffna	831,112	4,615	792,246	13,757	20,001	493
Mannar	106,940	8,710	54,106	28,464	14,072	1588
Vavuniya	95,904	15,876	54,541	6,640	18,592	255
Mullaitivu	77,512	3,948	58,904	3,777	10,766	117
	1,111,468	33,149	959,797	52,638	63,431	2453
		2.98%	86.35%	4.73%	5.71%	0.23%
Eastern Province						
Batticaloa	330,899	110,646	234,348	79,317	3,868	2720
Amparai	388,786	146,371	78,315	161,481	1,410	1209
Trincomalee	256,790	86,341	86,743	74,403	6,767	2536
	976,475	243,358	399,406	315,201	12,045	6,465
		24.92%	40.90%	32.28%	1.24%	0.66%
Overall total	2,087,943	276,507	1,359,203	367,839	75,476	8918
		13.24%	65.10%	17.62%	3.6%	0.43%

TABLE XIII- Population density in Northern and Eastern Provinces

Source: Census of Population and Housing, 1981



Map III - Northern and Eastern Provinces and Districts of Sri Lanka

Source: Department of Information, Colombo

It could be said that the historical background to the communal conflict runs back to the ancient days of the country. However, during the modern times, as pointed out already, political parties had been gravitating along communal lines, paving the way for ethnic rifts between the majority Sinhalese and the minority Tamils. According to Eric Meyer:

"even before independence, under the regime of self-government allowed by the British since 1931, communalist attitudes dominated political life, culminating in the Tamil claim for parity of parliamentary representation between the Sinhalese majority and the [Tamil] minority. From 1948 until 1977, despite the fact that successive Sinhalese Governments toyed with the idea of concessions, all promises came to nothing since the opposition party of the moment, either UNP or SLFP, constantly raised the communalist bidding, whilst the constant attitude of the Tamil₃₄ leaders was to turn in on themselves."

The political democratization of the State, and the introduction of universal adult suffrage in 1931 enabled the Sinhalese and the Tamils to bring out their common problems into public voting patterns and this could be easily identified since independence in 1948. Even prior to 1948, Members of Parliament who belonged to the Tamil minority were readily available to oppose Bills which had either very little or even no connection with discrimination against Tamils of the area. For instance, in 1941, when the Anuradhapura Preservation Bill was introduced to "make provision for control of the erection and alteration of buildings and of the sale or disposition of land in and in the neighbourhood of Anuradhapura mainly to

34. Eric Meyer, Sri Lanka in change and crisis, Crooms Helm Limited, London, 1984, p. 145.

preserve the ancient ruins of the city."³⁵ Mr.G.G.Ponnambalam, the Member of Parliament for Point Pedro,opposed the Bill for the reason that it would necessarily reduce the rights of the Tamils who were residing in the area. He said:

" . . . surely it is known and I say with great reluctance,that the town of Anuradhapura is in the main occupied by members of minority communities and land is owned to a very great extent,I think almost preponderantly,by members of the minority communities.I am sorry to have strike[sic] this note, but it has to be done.I say it is painful."³⁶

As a matter of fact,the town of Anuradhapura, which is the Capital city of the North Central Province of the country,situated 130 miles north of Colombo,the Capital, has been predominantly a Sinhalese area,since the early days, in which 91.4% of the inhabitants are Sinhalese,who live with 1.21% of Tamil population.

However, with the passage of time,the rift between the Sinhalese majority and the Tamil minority was increasing rapidly.While the Sinhalese increasingly felt threatened by Tamil control of business and the professions, the Tamils became increasingly self-conscious of their minority identity.³⁷ Moreover,it is interesting to note that members of the Sinhalese Buddhist majority also see itself as a minority whose identity is threatened.³⁸The Sinhalese population of just over eleven million is the only such community in Asia which has remained faithful to Buddhism which originated in India. The language spoken by the Sinhalese community is limited to Sri Lanka and is different from the Tamil language spoken

35.Hansard,11th November 1941,p.2784

36.Hansard,13th November 1941,p.2854

37.Sri Lanka;the ethnic conflict;myth,realities and perspectives,Committee for Rational Development,Navrang, Delhi,1984,p.73

38.Eric Meyer,op.cit.,p.148.

by the Tamils. In India itself there are over fifty million inhabitants who speak the Tamil language and who have connections with the Tamils in Sri Lanka. Nonetheless, the agitation among the Tamils, that they have been discriminated against Sinhalese was growing rapidly since 1948 and the post-independence period, discussed below, demonstrate the increasing anxiety among the Tamil politicians of the country to obtain regional autonomy for the provinces of the North and the East. For this reason, the political parties in power were pressurised throughout by Tamil politicians for the establishment of Provincial or Regional Councils in the island. Thus, it is important to examine varying attitudes of different political parties which came to power and the suggestions that were made to decentralise the administration, in order to assess the extent of authority which the Central Government was willing to devolve to the local government institutions of the country.

2. The period between 1948 and 1977

During the period from 1948 to 1977, a number of attempts were made to introduce Regional or District Councils to the island. The most significant feature seen in these measures was that the introduction of Regional or Provincial Councils was mostly based on political agreements between the Sinhalese and Tamil political parties. The other interesting point to be noted was the reluctance of the Central Government to implement District Councils and, especially, to grant extensive powers to the Councils

to carry out their duties. The most outstanding feature that should be noted in this respect was the difficulties and the failures that the Governments had to face in establishing Regional or Development Councils.

Since independence in 1948, although the first major attempt to establish District Councils, mainly to decentralise the administration, was made in May 1957, there had been several unsuccessful suggestions in 1950, 1955 and in early 1957. The suggestions in 1950 were to re-introduce the Donoughmore proposals, however with elected members as councillors. The Choksy Commission³⁹, which was appointed in 1955 to investigate whether any change in such Government was needed, and if so, to determine the nature and extent of the changes⁴⁰, also suggested that there was a need to establish Regional Committees in the island. Moreover, the associations of all the local government institutions which were functioning at the time, such as the Association of Urban Councils of Ceylon, the All Ceylon Town Councils Associations and the All Ceylon Village Committees Conference, had expressed the view that it was essential to establish Regional Councils in the island.⁴¹ However, the suggestions made by the Choksy Commission were not sufficiently far-reaching to decentralise the whole system of administration, as democratic decentralisation through the elective principle was not recognised by the Commission.⁴² According to the suggestions of the Choksy Commission:

39. *Supra*, Chapter Four

40. *ibid.*, S.P.No.33 of 1955

41. *Supra*, Chapters Three and Four

42. S.P.No.33 of 1955, p.144.

"The area of authority of the Regional Committees can generally be a Revenue Officer's District. There would be about twenty Regional Committees. . . . Each should be composed of local Heads of Departments (exclusive of the Judiciary) and unofficials. One representative for each Municipal, Urban and Town Councils, elected by each of those local authorities and one representative for each of several groups of Village Committees, should also be members. Every Member of Parliament would be an ex-officio member of the Regional Committee in his electorate. In no case should the total number of officials including the Chairman, exceed the total number of unofficials. There can be no objection to the official members also being given the right to vote in the circumstances⁴³

Moreover, it was also suggested that, during the transition period of five years of these Councils, the Chairman and the Chief Executive Officer was to be the Government Agent, who was the Chief Civil Servant of the province.⁴⁴ All these provisions regarding the composition of the Councils indicate that the suggestions by the Choksy Commission to establish Regional Councils were in no sense sufficiently far-reaching so as to decentralise the administration democratically. With regard to the powers of the Regional Councils, there were no provisions for them to take decisions at the district level. It was suggested that the Regional Committees should take over the functions from the Kachcheries.⁴⁵ Hence, the Regional Committees were to carry out social welfare and the relief of distress, the settlement of people on peasant and middle-class allotments, the organisation and supervision of rural development, rest houses, land acquisition, co-ordination of agricultural activity, minor irrigation and food production works and public performances,

43. *ibid.*, para. 143-144

44. *ibid.*, para. 147

45. *Supra*, Chapter Five.

but without any power to take decisions regarding the subjects of education and health in the district. However, no measures were taken to implement the suggestions of the Choksy Commission, which were submitted in 1955.

During the early months of 1957, a technical working group appointed by the National Planning Council, to report on "organizational arrangements for effective participation in rural areas in the process of planning and development"⁴⁶, recommended that it was necessary to implement Regional Councils as a local government institution in the island.⁴⁷ However, the report had not examined the composition and the powers of the Councils. Meanwhile, the agitation among the Tamil minority of the country was growing rapidly and the Tamil politicians were very keen to move in this matter to obtain a solution.

It should be noted at this point that the years 1956-57 marked the first outburst of serious ethnic violence in fifty years.⁴⁸ By this time the United National Party and the Sri Lanka Freedom Party were the strongest political parties⁴⁹ among other political parties such as the Lanka Sama Samaja Party (Ceylon Equal Society Party), Mahajana Eksath Peramuna (Peoples United Front) and Viplavakari Lanka Sama Samaja Party (Ceylon Revolutionary Equal Society Party)⁵⁰, while the Federal Party and the Tamil Congress fought for the support of the Tamil minority.⁵¹ By the time of the 1956 General Elections the United National Party, the Sri Lanka Freedom Party and the Viplavakari Sama Samaja

46. First Interim Report of the National Planning Council, National Secretariat - 1957

47. ibid.

48. Committee for Rational Development, op.cit., p.171

49. ibid.

50. A.J. Wilson, Electoral Politics in an Emergency State; The Ceylon General Election of May 1970, Cambridge University Press, 1975, pp.17-18

51. ibid.

Party (the Ceylon Revolutionary Equal Society Party) had opted for the declaration of Sinhala as the only official language. However, the Lanka Sama Samaja Party and the Communist Party continued with their/^{language}policy parity of Sinhala and Tamil.⁵² Meanwhile, during the General Elections in April 1956, the Coalition led by S.W.R.D. Bandaranaike (S.L.F.P.) and Philip Gunawardene (M.E.P.) obtained an absolute majority, winning fifty-one seats out of ninety-five, while the left had obtained seventeen seats and the United National Front only eight.⁵³ The most noteworthy feature at this point was that the election campaign of the winning Coalition Government was based mainly on the language issue and for this reason the first move of the Government was to introduce a Bill to make Sinhala the official language.⁵⁴ Discussing this event, the Report of the Committee for Rational Development pointed out:

"The Sinhala-only bill of 1956 was bitterly contested by both the Tamil Congress and the left members of Parliament. The marxists attempted to find reasons for the degeneration to racism that had occurred."⁵⁵

However, the Bill passed through the Parliament with sixty-six votes for (MEP, UNP and VLSSP) and twenty-nine votes (LSSP, CP and Tamil Congress) cast against it and, even as the Bill was being discussed in Parliament, the agitation on this issue led to the first outburst of serious ethnic violence in fifty years.⁵⁶ "It began" says the Committee on Rational Development, "when the Federal Party members who had started a satyagraha on June 5th when the Sinhala-only Bill (Official Language Bill, No. 33 of

52. Committee for Rational Development, op.cit., p.168

53. ibid.

54. ibid.

55. ibid., p.169

56. ibid.

1956) was introduced, were assaulted by a crowd of Sinhalese; there were further violent incidents against Tamils in Colombo and in the Gal Oya Valley in the Eastern Province."⁵⁷

The most interesting point with regard to this episode was that the ethnic problem of the island began to dominate the politics of the country; from 1956 all the attempts to decentralise the administration were introduced as a solution to this prevailing problem. For instance, in 1957 the Federal Party organised active resistance to the Government's language policy and announced a further satyagraha campaign,⁵⁸ and demands for autonomy, under a federal constitution for the Tamil areas,⁵⁹ and the Prime Minister, Mr. S.W.R.D. Bandaranaike, entered into a compromise agreement in July 1957 with Mr. S.J.V. Chelvanayagam, the leader of the Federal Party. Discussing this event, A.J. Wilson points out:

"Under the pact the Prime Minister agreed to have Tamil declared an additional official language, without prejudice to Sinhalese in Ceylon living in Tamil majority Northern and Eastern provinces and to a scheme of devolving administrative power to Regional Councils. The latter was a concession to the FP's demand for federalism."⁶⁰

The Regional Councils were to have powers over education, agriculture and land settlement. However, there were strong protests against the intention of the Prime Minister to establish Regional Councils in the island. Sections of Sinhalese, including the influential Buddhist priests, declared the pact to be a betrayal of Sinhalese interests,⁶¹ and the United National Party organized a protest march to Kandy, the hill Capital, against the Bill. The final

57. ibid

58. ibid.

59. A.J. Wilson, op.cit., p.25

60. ibid., p.26

61. Committee for Rational Development, op.cit., p.171.

outcome of these reactions was the withdrawal of the pact by the Prime Minister according to the demands of the majority Sinhalese. However, he was able to enact the Tamil Language (Special Provisions) Act, which was one of their demands.

Again in 1963 the question of setting up District Councils in the island was under consideration. The Throne speech of Mrs.Sirima Bandaranaike's Government announced that early consideration would be given to the question of the establishment of District Councils.⁶² Although a committee was appointed by the Government,under the Chairmanship of the Commissioner of Local Government,they were unable to submit their report prior to the General Election in 1965.⁶³

The General Election of March 1965 left no single group with an absolute majority, as illustrated in Table III, and the Federal Party joined with Mr.Dudley Senanayake's United National Party to form a Coalition Government, on the basis of a pact drawn up between Senanayake and Chelvanayagam.⁶⁴

UNP and allies		SLFP and allies		Uncommitted	Appointed members
UNP	66	SLFP	41	FP	14
SLFSP	5	LSSP	10	Indep.	6
TC	3	CP	4		
MEP	1				
JVP	1				
<hr/>		<hr/>		<hr/>	<hr/>
76		55		20	6

TABLE XIV - The results of the General Election,1965

Source: A.J.Wilson, op.cit., p.31

62.Hansard,17th July 1963,column 21
63.Unpublished Report,1964
64.A.J.Wilson, op.cit., p.31.

The agreement was for the Government to take the some measures to grant autonomy to/Tamil minority by means of the establishment of District Councils.⁶⁵ The Central Government during this period took some measures to fulfil this agreement. For instance, the first Throne Speech of the Government stated:

"earnest consideration will be given to the establishment of District Councils which will function under the control and direction of the Central Government."⁶⁶

Moreover, a Tamil Federal Party member was appointed as the Minister of Local Government. These points emphasise the fact that the Government intended to introduce District Councils to the island, but the grant of autonomy through this system was not possible, as the Councils were to function under the "control and the direction of the Central Government ". Nonetheless, the Senanayake Government could not establish the District Councils in the island as a threatened revolt from the ranks of the Government's parliamentary supporters forced the Prime Minister to abandon his District Councils Bill in mid-1968.⁶⁷ It is understood that, in fact even, the Prime Minister was not certain as to how these Councils should be established and as to what powers the Government should grant/ them. Discussing this, A.J.Wilson states:

"Senanayake himself had no convictions about the utility of these Councils. In fact, in the negotiations with the FP leaders on the details of the powers to be devolved on these Councils he had hoped that they would give up these demands once they began working with him."⁶⁸

65. Committee for Rational Development, op.cit., p.171

66. Hansard, 9th April 1965, column 9

67. A.J.Wilson, op.cit., p.365

68. ibid.

Hence,when the Government abandoned the proposal for establishing Development Councils,⁶⁹ the Federal Party's representative in the Parliament resigned his portfolio⁷⁰ on an unimportant issue.⁷¹

Furthermore,it is clear that the Prime Minister,Mr.Dudley Senanayake,had no intention of reviving the proposals to establish Development Councils.For example, he had pronounced in his address to the UNP's May day rally in 1970 that, in deference to the wishes of the majority of the people,he had abandoned the Bill and had no intention of reviving it.⁷² In fact ,he had repeated this assurance on a number of occasions after this first pronouncement at the May day rally.⁷³

However, in 1970, the United National Party Government was defeated by Mrs.Bandaranaike's Sri Lanka Freedom Party,and the General Election results in 1970,illustrated in Table XV,was most unfavourable for the UNP which was in power since 1965.

Party	Seats won	Votes polled	Percentage polled
SLFP	91	1,812,849	36.6
LSSP	19	433,224	8.7
UNP	17	1,876,956	38.0
FP	13	245,747	5.0
CP	6	169,199	3.4
ACTC	3	115,567	2.3
In.	2	225,559	4.6

Table XV - The 1970 General Election Results

Source:Statistical Abstract,Government Publication,1971

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- 69.White Paper of 3rd June 1968
70.The Minister of Local Government
71.A.J.Wilson,op.cit., p.36
72.Ceylon Observer,2nd May 1970
73.A.J.Wilson,op.cit.,p.100.

The most significant development during this period was the introduction of the Republican Constitution in 1972. Nevertheless, it is important to note that no changes were introduced to the structure of local government. Moreover, it is interesting to note that there was no mention either in the manifesto promises or in the Constitution with regard to the decentralisation of administration through the establishment of Development Councils.⁷⁴ Furthermore, the Prime Minister, Mrs. Sirima Bandaranaike, delivered a policy statement on 23rd June 1972 which made no mention either with regard to the development of local authorities or to decentralise the administration of the country.⁷⁵ Much attention was focussed over the functioning of the new Constitution and this would have been a strong reason for the less concern shown towards the development of local self-government in the country.

Concluding remarks.

The above discussion emphasises the difficulties faced by the vain attempts made by various Governments since 1926 to establish Provincial or Regional Councils in the island. However, as pointed out in Part I of this Chapter, analytically it could be argued that the reasons given for the non-implementation of these Councils demonstrate mostly the reluctance of the governing authorities to introduce them rather than the difficulties of establishing these institutions in the island. Moreover

74. Ferguson Directory, 1969-1970

75. ibid., 1977-1978, p.170.

it could be argued, on the one hand, that none of the proposals had any provision to grant regional autonomy so that the Councils could take decisions at the district level without the interference of the Central Government and this signifies the reluctance of the Central Government to relinquish the controls which it exercised over the local government institutions, which were discussed in detail in Chapters Six, Seven and Eight. However, it should also be noted that most of the proposals to establish District Councils since 1948 were offered as solutions for the increasing agitation among the Tamil minority of the country. Hence, it could be argued that the Central Government of the country was reluctant to decentralise the administration, in which the District Councils would have had the power to administer the services within their constituencies without seeking the approval from the centre, due to the fact that this might create more agitation among the majority Sinhalese of the country, who form more than 73% of the total population.

However, in 1977 the United National Party came into power with an overwhelming 2/3 majority. In his policy statement, the then Prime Minister, Mr. J.R. Jayawardene, stated:

"My Government will enable and ensure the participation of the people in the process of administration by decentralising the administrative set-up to the village level and making the people partners in the planning, organisation and implementation of policy. The Government recognises the importance of local government as an institution representative of

the people."⁷⁶

This was the first time after more than half a century, a Government was able to establish District or Provincial Councils for the purpose of decentralising the administration. Hence, in one sense it could be said that the introduction of Development Councils in 1981 was a land-mark in the development of local government. However, on the other hand with regard to the powers and functions of Development Councils, it appears that these Councils are not allocated with sufficient autonomous powers so as to handle matters such as decision-making and plan~~i~~mplementation at the district level without the intervention of the Central Government. Thus a question has arisen as to whether the Development Councils established under the Development Councils Act of 1980 is a successful introduction for the purpose of decentralisation? It is clear that, if there is a solution for the present community conflicts between the majority Sinhalese and the minority Tamils, it could be through the decentralisation of the administration with autonomous powers for the Councils at the district level. Under these circumstances, it is apparent that the Development Councils could be the media for a solution to the long-standing ethnic conflict. With this background analysis in mind, we will be focussing our attention to discuss the position of the Development Councils in the next Chapter.

76. ibid.

Chapter Ten

The Development Councils Act of 1980:the decentralisation of administration and devolution of authority;

Part Two: The theory and the practice

I.The introduction

The General Election held in July 1977, brought the United National Party Government, led by Mr. J. R. Jayawardene into power, with an overwhelming parliamentary majority. This change in the Government offered the prospect of two substantial reforms in the Central Government as well as in the local government. Consequently, an Executive President was elected as the head of the State under the Republican Constitution of 1978. Secondly, the local government system of the country was reformed by abolishing all Town and Village Councils throughout the island and establishing Development Councils under the Development Councils Act, in place of these two councils. Under the Development Councils Act, provision was made to establish a system of District Ministers to direct the activities in the twenty-four administrative districts in the island.

Out of these two reforms the first appeared to be the more clearly conceived, with wide agreement among the UNP members with its implementation. In fact, this proposal was one of the most prominent manifesto promises in the UNP election mandate. For this reason, as well as due to the

enthusiasm of the UNP Government, much precise thought and consideration was given to the first proposal. Thus, the proposal of the establishment of Development Councils, was discussed without much detailed deliberation. In fact, it has been said that the formal Constitutional amendments carried out by the Parliament were of an enabling character, leaving most of the decisions concerning the functions and duties of District Ministers to be worked out "administratively".¹

It is worthy to note that since 1977, until the enactment of the Development Councils Act in 1980, a number of groups examined the proposal for the establishment of Development Councils and the introduction of District Ministers as their chiefs. For instance, a group comprised of UNP parliamentarians, another which consisted of Senior Civil Servants from the Ministries of Local Government and Home Affairs, a third Committee, formed of Civil Servants from the Ministry of Planning and Economic Affairs and a Special Commission appointed by the President were inquiring as to the proposals of the Development Council and District Minister system.²

However, it is interesting to note that the outcome of these Commissions and Committees was not far-reaching. On the one hand, none of the Commissions appeared to be in agreement about the purposes and functions of these new councils. On the other hand, since 1977, there was a "feeling" among the members of the public sector,

1. Peter Dawson, Decentralisation in Sri Lanka, the significance of the District Minister, Collected Seminar Papers, No. 23, University of London, Institute of Commonwealth Studies, p. 14
2. Personal interview.

the private sector and the general public, that the decision-making power was generally on an "ad hoc" basis. For instance, discussing this particular point, Peter Dawson mentioned:

"The principal determinant of which body of advice would prevail was that of access to the Prime Minister's ear. It can be observed that this sort of plural, atomized, unintegrated and ad hoc decision making is a fairly common feature of Sri Lanka Government at any time in recent years, but was to be regretted in that a unique opportunity of achieving a concerted and coherent set of changes across the whole field of sub-national Government, appeared in danger of being lost."³

This factor is clearly visible, in the introduction of the Development Councils in the island. As mentioned earlier, the Government appointed a Special Presidential Commission on Development Councils and out of the ten members of this Commission only five were of the opinion that these councils should be established under the proposed provisions. On the other hand, three members agreed subjected to reservations, one member dissented to the report and another member, while disagreeing to the report of the other members, submitted his own proposals to the President. It should be noted that ^{it was} this member (who is a Tamil Lawyer, ^{whose} working for the Government)/proposals that the Government had taken into consideration for the implementation of the Development Councils Act.⁴

The Development Councils Act, No. 35 of 1980, was introduced in 1980 and the elections for these councils were held in early 1981. Twenty-four District Ministers with other councillors, ^{role} whose/ will be discussed in detail later, were elected. However, with regard to the establishment of

3. Peter Dawson, op.cit., p.14

4. The Committee for Rational Development, 1984, p.91

Development Councils, it could be argued that this introduction was not able democratically to decentralise the administration. It is clear that the intention of this introduction was to devolve the authority on the Development Councils. For instance, in the President's letter to the Commissioners of the Special Presidential Commission, he emphasised the need to strengthen and broaden the democratic structure of Government and the democratic rights of the people. Further, the President pointed out:

"[the] Government recognises the need for a larger measure of participation by the people in the administrative bodies dealing with economic development. Appreciating the advantages of democratic decentralisation for accelerating development and promoting participatory democracy, the Government had decided to constitute a Presidential Commission to make recommendation regarding a scheme of devolution and decentralising administration".⁵

It is apparent that the President's intention was to empower the Development Councils to carry out these objects. However, according to a detailed examination of the structure, the powers and functions of the Development Councils, it is argued in this Chapter, that the Development Councils were not empowered with sufficient authority to fulfil the ambitions of President Jayawardene, ⁱⁿ democratically decentralising / ^{the} administration. On the other hand, certain important factors point out that in practice the Government had no desire to grant overwhelming authority to the Development Councils. The appointment of a District Minister, in charge of these Councils at the district level, which will

5. The President's letter to the Commissioners of the Special Presidential Commission, 2nd August 1979.

be examined and discussed in the following paragraphs in greater detail, could be mentioned as an example in this respect. As will be apparent later, the District Minister had the overall authority to "control" the Development Councils through his power to influence the decisions at the district level. Nonetheless, it could be argued that this authority granted to the District Ministers was purely the intention of President Jayawardene, to control the Development Councils without allowing the people to decide democratically upon the needs of their villages and districts. For example, as Peter Dawson has pointed out:

"with the creation of an executive presidency, with powers separate from those of the Prime Minister, the District Ministers may be expected to act as the ears, eyes and hands of the President, who will otherwise lack direct control over the machinery of Government and who would have only a limited capacity to influence events in the country at large. Several observers felt that the two constitutional proposals were inextricably linked in the mind of J.R. Jayawardene."⁶

The Constitution of the Development Councils, their composition and the powers attributed to them to carry out the duties emphasise theoretically that the Development Councils are not creations for the purpose of democratically decentralising the administration. Moreover, the practical experience of the functioning of these councils further confirms that these bodies are more or less institutions at the district level which function under the control and the supervision of the Central Government. To identify these set backs of Development Councils and the extent of the authority

6. Peter Dawson, op.cit., p.15.

granted to them, we will be analysing firstly, the structure of Development Councils, followed by an examination of the functions and duties of these councils. However, it should be noted that the Development Councils started functioning only four years ago, in 1981. Within the course of this short period, it is clearly visible that they have proved to be local government institutions that were unable to carry out the functions which were allocated to them. This was the main reason for the establishment of the theory that the Development Councils are "paralysed"⁷, and that they are not in a position democratically to decentralise the administration of the Government. Nonetheless, by 1983, just after two years of the introduction of the Development Councils, seven Councils were dissolved and taken over by the Special Commissioners, who are Government officers. This was due to the seventh amendment to the Republican Constitution of 1978, which made provision for a compulsory oath from all the Government, semi-governmental and Corporation officers and the parliamentary members, to the effect that no person would render their assistance with regard to a decision to divide the country.⁸ As a result of this amendment to the Constitution, the Tamil members of Parliament who represented the Tamil United Liberation Front, vacated their seats. Simultaneously, this effected the Development Councils in the Northern and Eastern provinces, as these Members of Parliament were the District Ministers of these institutions. Moreover, it is a clear fact that at present, the Government is faced with a crucial problem

7. Personal interview

8. Sixth amendment to the Republican Constitution of 1978.

of ethnic conflict ,and for this reason the interests of the Government in developing the administrative structures of the country have decreased alarmingly. Furthermore, the Development Councils have become a very sensitive point for discussion. The alarmingly increasing death tolls of innocent civilians in the Northern ,Eastern and even in some of the other parts of the country could be pointed out as reasons for this "unnatural tendency of fear". However, all these factors have made it remarkably difficult to get the relevant information in relation to Development Councils. Nevertheless, we will be focussing our attention to examine the above mentioned points with the aid of the available data and material.

II.The structure,powers and composition of Development Councils

1.The structure of Development Councils

As mentioned earlier, under the Development Councils Act,1980, twenty-four Development Councils were established throughout the island. This Act was amended in 1981⁹, and the new amendment introduced the Gramodaya Mandalayas (Village Committees) and Pradeshiya Mandalayas (Regional Committees) to the island. This amendment introduced for the first time to the island a three-tiered structure in local government which comprised Gramodaya Mandalayas, the Pradeshiya Mandalayas and the Development Councils. The Gramodaya Mandalayas are established in every Grama Seva

9.Development Councils(Amendment) Act,No.45 of 1981.

Niladhari's division (Village Services Officer) in the country, enabling every four to five villages to have a Gramodaya Mandalaya to attend to their needs. A Pradeshiya Mandalaya on the other hand, is established in every Assistant Government Agent's division and at present there are about two hundred and forty Pradeshiya Mandalayas in Sri Lanka.¹⁰ Development Councils are constituted in the twenty-four administrative districts of the country, and these comprises the Development Council and the Executive Committee. In this three tier system the highest authority is the Development Council which is constituted for each administrative district of the island.

10. Personal interview, Department of Local Government, Colombo.

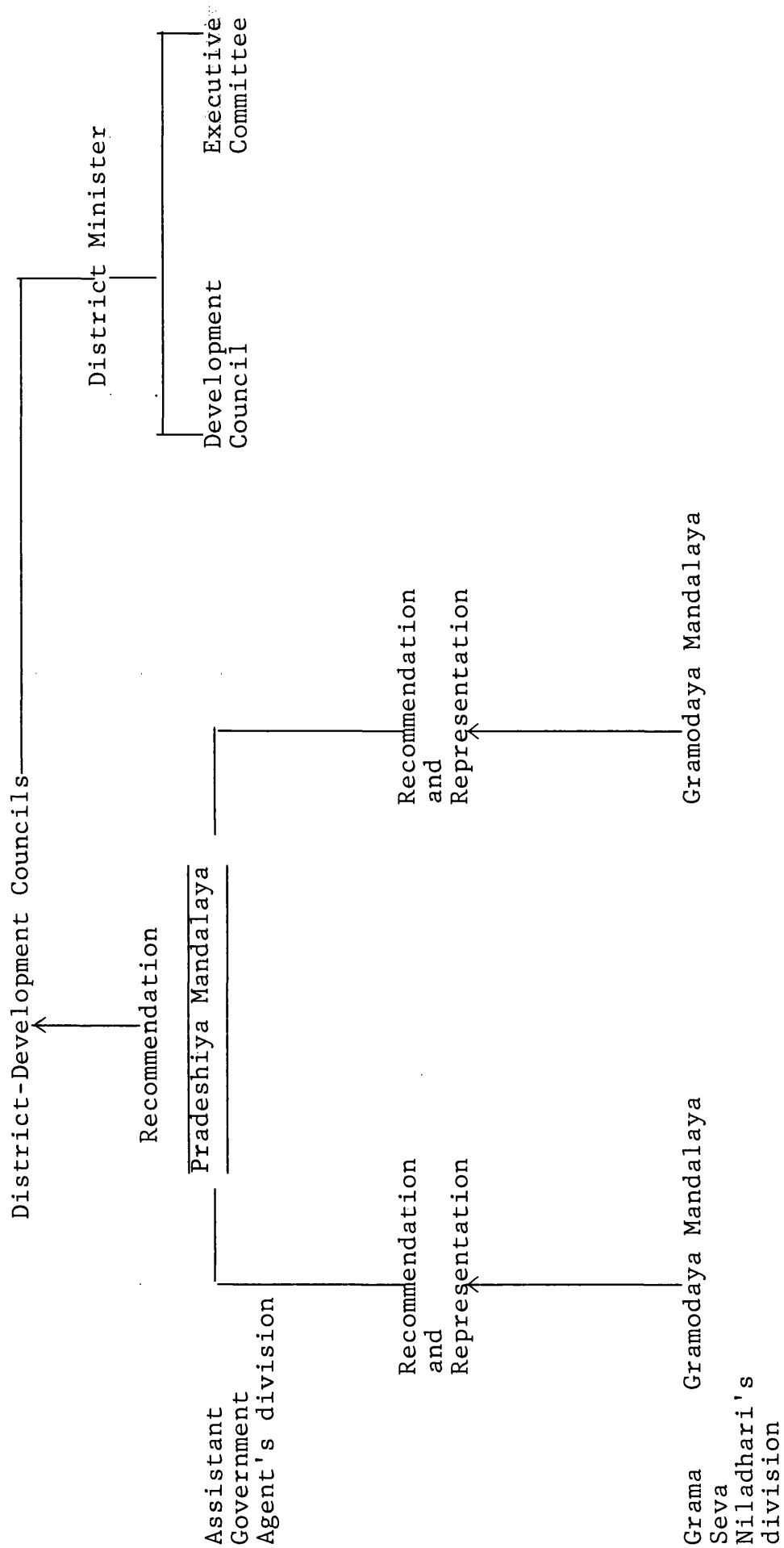


Diagram XI - The structure of Development Councils

Source: Department of Local Government, Colombo

As illustrated in diagram / ^{eleven,} the Gramodaya Mandalayas are established at the "grass-root" level of the administrative structure. These councils propose their recommendations for the development of their villages to the Pradeshiya Mandalaya and the Pradeshiya Mandalayas are empowered to recommend their proposals to the Development Councils. The Development Council, which consist of elected and nominated members, generally discuss these proposals with the Executive Committee of the council which comprise Government officials such as the District Secretary. However, it must be noted that this was the structure introduced under the Development Councils Act for the purpose of decentralising the administration of the country.

Discussing the ambiguities of the word decentralisation, A.H. Hanson has stated:

" . . . it can be nothing more than the introduction into a unified administrative agency of a scheme prescribing that decisions previously taken at a high level shall henceforward be taken at a comparatively low level. It can mean a more formal and less revocable delegation of authority within a hierarchy or the splitting up of a formally unified agency into two or more separate agencies. It can be used to describe the re-organisation of an administrative function by the creation of field officers or the wholesale transfer of a central agency's functions to separate regional authorities, or the creation for certain purposes of special ad hoc bodies¹¹ outside the normal administrative structure."

Thus, according to this analysis and the structural organisation of this new introduction, it is significant that the introduction of the Development Councils in 1981, effectively decentralised the administration of the

¹¹ A.H. Hanson, Planning and the Politicians, Routledge and Kegan-Paul, 1969, p.105.

island. Hence, it could be said that the foundations were laid by the Government for more effective participation of the people in the exercise, discharge and performance of the powers, functions and duties at the district and village level, by the establishment of Gramodaya Mandalayas, Pradeshiya Mandalayas and the Development Councils.¹²

Moreover, the Constitution, composition and the powers and functions attributed to Gramodaya and Pradeshiya Mandalayas clearly emphasise the fact that by the establishment of these councils the Government was able to decentralise the administration. Hence, it is essential, firstly, to analyse the Constitution, composition, powers and functions of the Gramodaya and Pradeshiya Mandalayas.

2. The Constitution, composition, powers and functions of Gramodaya and Pradeshiya Mandalayas

The Gramodaya Mandalayas consist of the Chairman,¹³ the President or head of every such organisation, association or body, which is not of a political nature as may be specified by the Minister by order published in the Gazette as one which in his opinion should be represented in any Gramodaya Mandalaya, having regard to the interests that such organisation, association or body represents or serves.¹⁴

At present, the Gramodaya Mandalayas consist of the members of the non-political voluntary organisations, such as Rural Development Societies, Community Centres, Women's Societies, Credit Societies, Religious Societies, Sports

12. Development Councils Act, section 17(A) 1

13. *ibid.*, section 17 A (2) a

14. *ibid.*

Associations, Cultural and Drama Societies, Death Donation Societies, Self Help Societies, Sarvodaya Societies, Lions Clubs, Apex Societies and Jaycees.¹⁵ In addition to the non-governmental members, although the Minister has the power to nominate any number of public officers (such as Cultivation Officers, Agriculture Extension Workers, Heads of Schools or Family Health Officers) as members of the Gramodaya Mandalayas,¹⁶ it could be argued that these bodies are independent authorities from the Central Government as the nominated members have no power to vote at any meeting of the Gramodaya Mandalayas,¹⁷ including the election of the Chairman of the council.¹⁸ The Pradeshiya Mandalayas consist of the Chairman of every Gramodaya Mandalayas of the area.¹⁹ Similar to the Gramodaya Mandalayas, the Pradeshiya Mandalayas, signify that they are independent from the Central Government as the nominated members of the councils are not entitled to vote at any meeting of the Pradeshiya Mandalaya²⁰, including the election of the Chairman of the council.²¹

The powers and functions of these two bodies confirm that they are independent institutions, established at the level accessible to the villager to secure the needs of the people and to provide for participation in the process of administrative and in development work; they provide an opportunity for people to participate in the preparation of pragmatic plans and the implementation of such plans, and also to secure Government extension services for the benefit of the area, in addition to exercising vigilance over the

15. Personal interview, Department of Local Government, Colombo
16. ibid.

17. Development Councils Act, section 17 (A) 2(b)

18. ibid., section 17(A) 3

19. ibid., section 17 (A) 4(a)

20. ibid., section 17(A) 4(b)

21. ibid., section 17(A) 5(a).

services provided by Government and semi-governmental institutions.²²

Moreover, the powers and functions and the structural linkage between, Gramodaya Mandalayas and Pradeshiya Mandalayas with the Development Councils at the district level demonstrate that this three tier structure has decentralised the administration of the country. Prior to the introduction of the Development Councils Act, it was announced by the Government that the villagers still could exert considerable influence over the governmental functions and they were generally buttressed by the bureaucracy.²³ For this reason, the Government gave priority to three important factors:

1. Infrastructural development in a physical sense alone was inadequate. One had to generate a dynamism from within the rural community which would have to be self-reliant;
2. Planning from the top-down would have to give way to more participatory management styles, with decision making at the local level;
3. The people themselves should participate in both planning and implementation.²⁴

The major institutional change which was to bring about local level participation and decision-making was the Development Council system, especially by the introduction of the Gramodaya and Pradeshiya Mandalayas. Especially, after the amendment to the Development Councils Act, the extent of the decentralisation of the administration at the village level was clearly visible. The Gramodaya Mandalayas, as pointed out already, are independent bodies without much influence from the Central Government. The functions and duties of a

22. Personal interview

23. A statement made by Bradman Weerakoon, Secretary to the Prime Minister, The Sunday Observer, 30th January 1983

24. ibid.

Gramodaya Mandalaya may be identified as follows:

- 1.to identify the felt needs in the area and to make necessary recommendations to the Development Councils through the Pradeshiya Mandalaya,for the formulation of the necessary development plans.
- 2.to participate in the monitoring of the progress of projects; and
- 3.to assist and advise the Development Councils with regard to its duties and functions (of the Development Council).²⁵

With regard to this third factor,the Gramodaya Mandalayas are to assist the Development Councils in the preparation of the annual development plan,which will be discussed in detail later.²⁶However, among its functions,the most important is to shoulder the responsibility in preparing and forwarding the development proposals to the Development Council.For this purpose the Gramodaya Mandalaya has to investigate the available resources within their division and to recommend the necessary schemes to develop the area. These schemes for development in village areas are solely handled by the Gramodaya Mandalayas throughout the island.²⁷ The Gramodaya Mandalayas are interlinked with the Pradeshiya Mandalayas and Development Councils at the district level. The Development Councils Act states:

"Every Gramodaya Mandalaya shall submit its recommendations in respect of the exercise, discharge and performance of the powers,functions and duties under this Act of the Development Council and the Executive Committee of the Development Council,to the Pradeshiya Mandalaya of the Assistant Government Agent's division within which such Gramodaya Mandalaya is established."²⁸

The Act further states:

25. Personal interview, Department of the Local Government, Colombo

26. ibid.

27. ibid.

28. Development Councils Act, section 17(A) 6(b).

"Upon receipt of the recommendations of the Gramodaya Mandalaya under paragraph(a) it shall be the duty of such Pradeshia Mandalaya to consider such recommendations and submit its recommendations thereon to the Development Council or the Executive Committee of the Development Council, as the case may be, and the Development Council, or the Executive Committee of the Development Council, as the case may be, shall take into consideration such recommendations in the exercise, discharge and performance of the powers, functions and duties under this Act of such Development Council or Executive Committee as the case may be."²⁹

The Indian experience signifies that there too, a similar scheme was adopted to decentralise the administration of the country through local government institutions. The system of democratic decentralisation known as the Panchayati Raj was first introduced in 1959, and under this scheme, democratic local government institutions were created at the village, block and district level and are known as Panchayat, Panchayat Samiti and Zila Parishad respectively. Moreover, like the newly introduced Development Council system in Sri Lanka, the Indian Panchayats too are recognized as units of a decentralised system of administration entrusted with powers and resources to implement programmes of social and economic reconstruction.³⁰ Discussing the extent of decentralisation of the administration in India by the implementation of the Panchayati Raj system it has been stated:

"Be it a new well for clean drinking water, a new school, a new road to a market town, a dispensary, a co-operative to supply seeds and fertilizers, or a campaign to increase farm production, the Panchayat is the body which plans and executes development work with the active support of the people on the one hand, and assistance from government agencies on the other."³¹

29. ibid., section 17(A) 6(b)

30. B.S. Bhargava and S. Rama Rao, Indian Local Government; A Study,

Minerva Associates Publishers, India, 1978, p. 51

31. ibid., pp. 51-52.

Thus, taking all these aspects into account, in principle it could be said that by the introduction of the Gramodaya Mandalayas, Pradeshia Mandalayas and the Development Council system, the decision making power was allocated to the grass-root level.

However, on the other hand, an examination of the Constitution, composition and the functions of the Development Councils reveal that, important aims which inspired the establishment of these councils have not been achieved. As stated by the Prime Minister's Secretary, Mr. Bradman Weerakoon, in 1983, these objects included: the power to monitor and evaluate implementation, to identify bottle-necks and advise corrective action and to directly supervise inter-departmental activity.³² Moreover, the Prime Minister pointed out:

"The Development Council will act as a valuable barometer. Any Minister could use it for testing public opinion for any intended change. It will also be possible for the Development Councils to refer matters to the Central Government for consideration. This two way process of communication can only be for the common good of the whole country. The broad contact that the Development Councillors will have with the people of the district should enable them to give a real experience of the felt needs at the villages. Those needs could be reflected in the decisions of the Development Councils. Through this process the people's real wishes will be reflected on administrative decision making."³³

Thus, in other terms the intention of the Government was to allocate more decision-making powers to the general public, and to develop the country by introducing the democratic principle to the districts and villages. However, it is doubtful as to whether the Government accomplished

32. A statement made by Mr. Bradman Weerakoon, op.cit., p.13

33. Gramodaya Mandalayas Hand Book, Ministry of Local Government, Housing and Construction, p.3.

these far-reaching intentions. The result of these objects of the Government in one sense has close resemblance to the experience of the Tanzanian attempt to decentralise the administration by establishing District Development Councils. Professor James Read, discussing the District Development Councils in Tanzania, stated:

"In short, the overall aims were greater efficiency combined with more democracy. Yet the scheme for the implementation of these aims appears to involve many paradoxes. The structure aims to regionalize the bureaucracy, bring it nearer to the people; yet the effect may be to increase the directness and immediacy of impact of bureaucratic decisions."³⁴

It is apparent that a similar result has occurred in Sri Lanka in relation to the Development Councils which have close resemblance to the Tanzanian District Development Councils. In Tanzania the District Development Councils are established at the district level and there are higher authorities at the regional level and lower units below the district level.³⁵

Nevertheless, at this point, it is necessary to analyse the Constitution, composition, powers and functions of the Development Councils, the Executive Committee and the District Minister System, as they demonstrate the fact that the aim of the Government was to "regionalize the bureaucracy".³⁶

3. The Constitution and composition of Development Councils

As pointed out in the introduction, the Development Council established at the district level is the

³⁴. Professor James S. Read, "Tanzania", Annual Survey of African Law, Volume VI, N. Rubin and E. Cotran, editors, London, Rex Collings, 1972, p. 123

³⁵. ibid., pp. 119-121

³⁶. ibid., p. 123.

highest ranking council in this three-tier system. The Development Council consists of a District Minister, elected and appointed members and an Executive Committee. It is worthy to note at this juncture, although we will be discussing this point in greater detail in the forthcoming paragraphs, that the executive power of the Development Council is vested in the Executive Committee headed by the District Minister. However, it is essential to analyse the Constitution of the Development Council, before we turn to examine the powers of the District Minister and the Executive Committee of the council.

Each Development Council area is an electoral area for the purpose of election to the councils and a Development Council is to be constituted for each administrative district.³⁷ The parliamentary electoral districts are co-terminous with the administrative districts and for the purpose of parliamentary elections the country is divided into twenty-two electoral districts. However, there are twenty-four administrative districts in the country as the electoral district Vanni comprises the three administrative districts of Mannar, Vavuniya and Mullaitivu. Hence in 1981, twenty-four Development Councils were established in the island.

One of the significant features of the Development Councils is that they not only consist of elected members but also of the Members of Parliament for the administrative district. Thus, according to the Development Councils Act:

37. Development Councils Act, section 2(1)a.

"A Development Council shall consist of the following.

- a).the members of Parliament for each administrative district for which such council is constituted;³⁸ and
- b).such number of councillors elected on³⁹ the proportional representative system."

Moreover,the President of the Republic has the power to decide the number of elected members in a Development Council.⁴⁰ This is in accordance with the condition that the number so specified by the President to be elected should be less than the number of Members of Parliament elected for the administrative district for which a Development Council is constituted.⁴¹ The only exception for this provision is:

"Where the number of Members of Parliament elected for the administrative district is less than three, the President shall specify such number of members, which together with the number of Members of Parliament elected for such administrative district shall be not less than five and for such purpose he may specify such number of members which may exceed the number of Members of Parliament elected for such administrative district."⁴²

Nonetheless,the figures of the Members of Parliament and elected members in Development Councils tabulated below,clearly demonstrate the fact that in most of the councils the number of ex officio members are higher than the elected members. However,one could argue that although the Development Councils comprise,nominated members,they too belong to the category of democratically elected members,as they are Members of the Parliament whom were elected by the people in 1977 General Election. Nevertheless, it could be counter argued that,although, the nominated members were elected by the people this was in no sense for the membership of the Development Councils. It could be said that it /^{is} necessary for a democratic council to elect all their members under the local authority elections.

38. ibid.,section 3(1)a

39. ibid.,section 3(1)b

40. ibid.,section 3(1)c

41. ibid.

42. ibid.,section 2(1)c(1).⁴²⁸

Development Council	Members of Parliament	Elected
Colombo	16	16
Gampaha	13	12
Kalutara	9	8
Kandy	14	13
Matara	4	2
Nuwara Eliya	5	5
Galle	9	9
Matale	7	6
Hambantota	5	3
Jaffna	11	10
Mannar	2	4
Vavuniya	1	4
Mullaitivu	1	5
Batticaloa	5	3
Amparai	5	4
Trincomalee	3	2
Kurunegala	13	13
Puttalam	5	4
Anuradhapura	7	6
Polonnaruwa	3	2
Badulla	9	8
Moneragala	3	2
Ratnapura	8	7
Kegalle	4	8

TABLE XVI- The number of the elected and appointed members of Development Councils

Source: Department of Local Government, Colombo.

In some of the districts, it should be ^{noted,} /that all the nominated members belong to the governing United National Party. The Anuradhapura Development Council, in which there are seven nominated members who belong to the United National Party, could be pointed out as one of the examples. Moreover, notwithstanding the provisions of the Gramodaya and Pradeshia Mandalayas the elected as well as the appointed members of the Development Council: participate in the election of the Chairman.⁴³

Nevertheless, it could be argued that it would be preferable to have only elected members in the Development Councils if they are to take the initiative for a devolution of the Government. Moreover, as A.H.Hanson, has pointed out:

"the ambiguities of the word decentralisation . . . when qualified by the word "democratic" it implies that the transfer of power is to a body that has been democratically elected, such as a local government authority, a professional association or a working council."⁴⁴

This factor could be emphasised through a study of the Indian Panchayati Raj's which have close resemblance to Sri Lankan Development Councils. The Indian Panchayati Raj system, was introduced for the "democratic decentralisation of the country".⁴⁵ As has been pointed out already, the system of Panchayati Raj is built on a three-tiered foundation; "Gram Saba", the rural base ,the "Panchayati Samiti", the block level and the "Zila Parishad", the highest tier.⁴⁶ The Gram Saba consists of all the voters or adults residing in the jurisdiction of the Panchayat⁴⁷, the

43. Personal interview

44. A.H.Hanson, op.cit., p.105

45. Balvantray G.Mehta Commission of 1957

46. B.C.Bhargava, S.Rama Rao, Panchayats in India, Minerva Associates Publishers, India, 1978, pp.51-54

47. ibid., p.52.

intermediate tier or the Panchayat Samiti consists of all the Chairmen of the village Panchayats and such other persons as has been granted special representation such as backward classes, women, co-operative societies and local members of the State Legislature.⁴⁸ However, in some of the states, the Samiti members are directly elected.⁴⁹ The highest level or Zila Parishad comprises all Chairmen of Panchayat Samitis, a few co-opted persons⁵⁰ and, in some states, the District Officer. Thus, it is clearly evident that in most of the states the Panchayats are not under the influence of the representatives of the Government. The Balwant Rai Mehta Commission, which reported in 1957, had stated:

"Panchayat Raj- three tier machinery must not be cramped by too much of control by the Government or governmental agencies."⁵¹

Further, it had stated that this body can function effectively only if it is the sole authority for all those development programmes which are of exclusive interest for the areas.⁵² With regard to the views of Balwant Rai Mehta Commission and the present Constitution and composition of the Panchayat Raj some Indian lawyers have stated:

"It seems for us that the Balwant Rai Mehta recommendations have been despatched to the dust-bin by the new power centres."⁵³

It is clear that when the Council comprises elected as well as appointed members, difficulties may arise with regard to a democratised decision-making at the district level. For instance, the experience of Tanzanian District Councils, which consist of elected and official members,

48. ibid., pp. 53-54

49. ibid., p. 54

50. T. Leitan, Local government and decentralised administration in Sri Lanka, Lake House Investments Ltd, 1979, p. 228

51. Balwant Rai Mehta Commission, op.cit., p. 228

52. ibid.

53. Dr. R.S. Rajput and Professor D.R. Meghe, Panchayat Raj in India-Democracy in grass-roots, Deep and Deep Publishers 1984, p. 105

demonstrate that the local decision-making power is more or less in the hands of the Government officials.⁵⁴

With regard to Sri Lanka ,the District Minister system and the Executive Committee of the Development Council confirms the fact that the decision making power is in the hands of the regional bureaucrats.

i.The District Minister system and the Executive Committee

The District Minister system was introduced in 1981 and this came as a fulfilment of the United National Party's election manifesto.⁵⁵ In early 1977,the leader of the United National Party,Mr.J.R.Jayawardene,put forward his election manifesto seeking for a mandate to form a Government with an Executive President,under a new Republican Constitution. In his election manifesto he had further stated:

"The people had been reduced to speechless spectators of State action by the previous Government. Local Councils have become direct agents of the administration and have no longer become responsible to the electors.

My Government will enable and ensure the participation of the people in the process of administrative set-up to the village level and making the people partners in the planning, organisation and implementation of policy. The Government recognises the importance of local government as an institution representative of the people.

My Government will revitalise the local government system by-

- a).creating a net-work of local government bodies throughout the island with larger areas of operation and more responsible functions;
- b).providing the resources both financial and otherwise by allocating monies from the Consolidated Fund to local bodies;
- c).making provision for the election of Heads of local bodies by all the voters of the respective

54.Professor James S.Read,Annual Survey of African Law,Volumes III,VI and VII,B.C.Smith,Decentralization,London,George Allen and Unwin,1985, D.A.Rondinelli,Decentralisation and development in administration,United Nations Centre for Regional Development

55.Ferguson Directory,1977-1978.

areas of authority.

The Government will also establish Development Councils at the electoral and district levels for the purpose of co-ordinating and directing development programmes. . . . Development Councils will be headed by a District Minister of State, who will not be a member of the Cabinet, and will consist of Members of Parliament, elected heads of local bodies and Government officials."⁵⁶

Accordingly, the President appointed District Ministers for each district in the island on 5th October 1978. This was a preliminary step for the establishment of the Development Councils in the island. After the introduction of Development Councils in 1980, the District Minister became the link between the centre and the district and mostly acts as the representative of the Central Government to see that the Government decisions are carried out at the district level by the Development Councils. There are a few prominent features of the District Ministry system which confirm the theory that he is more or less a representative of the Government, rather than a representative of the people of the district. Firstly, the District Ministers were appointed by the President,⁵⁷ and it is essential that generally, he should be a Member of the Parliament of the Government group.⁵⁸ Moreover, there is no necessity for the Minister to be the District Minister of the same district in which he was elected as a Member of Parliament.⁵⁹ For instance, during the period 1981 to 1982 the District Minister of the Anuradhapura Development Council was the Member of Parliament of a constituency of the Kurunegala district. This factor emphasises the theory that the District Minister is more or

56. Ferguson Directory, 1977, p. 110

57. T. Leitan, *op.cit.*, p. 258

58. Personal interview

59. Personal interview.

less a representative of the Central Government rather than of the people of the district. It should also be noted that in the hierarchy, the District Ministers are ranked next to Ministers appointed at the national level.

It could be said that the District Minister is the key figure in the Development Council system as his power includes the formulation of the District Development Plan, maintaining and evaluating its implementations, identifying bottle-necks, advising on corrective action and directly supervising inter-departmental activities within the district.⁶⁰ However, the most important role of the District Minister at the district level is the involvement with the Executive Committee of the Development Council which will be discussed in detail in the following paragraphs.

Under the Development Councils Act of 1980 provision was made for an Executive Committee for the council. According to the Act:

"There shall be an Executive Committee of a Development Council consisting of the District Minister, the Chairman of the Development Council and not more than two other members of the Council appointed by the District Minister in consultation with the Chairman."⁶¹

The Act further provides:

"The District Minister shall be the head of the Executive Committee and shall in consultation with the Chairman and with the concurrence of the President determine the nature of the functions to be assigned to each member of the Executive Committee."⁶²

Furthermore, the President could appoint a District Minister for the Development Council.⁶³ The Act

60. Personal interview

61. Development Councils Act, section 31(1)

62. ibid., section 31(2)

63. ibid., section 48(1).

states:

"The President shall in consultation with the District Minister, and when he considers it necessary, in consultation with the Chairman of the Council, appoint in respect of each Development Council a District Secretary who shall, subject to the direction of the Executive Committee exercise supervision over all members of the district service appointed to his district."⁶⁴

In practice, it should be noted that the head of the District Secretariat (the Government Agent), who is a Government official is appointed by the President, as the District Secretary.⁶⁵

It is apparent that the executive power of the Development Council is vested in the Executive Committee. The Prime Minister, discussing the District Minister and the Executive Committee system, stated:

"The District Minister and his Executive Committee is an extension of the power of the President and his Cabinet to the district and the functions of the Central Government are now decentralised through this process. The Development Council is also like a mini Parliament. The District Minister who is appointed by the President represents the Cabinet and he acts on the directions of the President and Cabinet."⁶⁶

Generally, the Executive Committee meets at least once a month, in order to assist the Development Council in the execution of the programmes set out in the Annual Development plans, such as exercising the financial controls, supervising the staff, monitoring the progress etc. The Executive Committee is also responsible for the conduct of the administration of the council for which the district service has been set up under the District Secretary.

64. ibid.

65. Personal interview

66. Gramodaya Mandalaya Hand Book, op.cit., pp.2-3 .

This emphasises the fact that the Executive Committee, is the back-bone of the whole structure of the Development Council system. The functions which are devolved to the Executive Committee discussed below, demonstrate the fact that , by the establishment of the Development Council system the decision-making power was allocated to the members of the bureaucracy, stationed at the district. Thus, the formulation of the annual development plan is one of the major functions of the Executive Committee. According to the Development Councils Act:

"The Executive Committee of a Development Council shall,

- a). in respect of all or any of the subjects specified in the First Schedule to this Act, consider the draft development proposals prepared by the appropriate Minister, prepare an annual development plan incorporating all or any such proposals and submit such plan through the Minister to the Development Council for its approval;
- b). prepare a budget containing an estimate of the available income and the details of the proposed expenditure for the ensuing financial year;
- c). conduct the administration of the council;
- d). implement the annual development plan;
- e). exercise, discharge and perform such powers, functions and duties as are delegated to it by the District Minister with the concurrence of the President."⁶⁷

Moreover, the Executive Committee has the power even to interfere with the development plans of the Gramodaya and Pradeshiya Mandalayas of the district .According to the Development Councils Act, the Gramodaya Mandalaya has to submit its recommendations in respect of the exercise, discharge and performance of the powers, functions and duties to the Pradeshiya Mandalayas and it is the ⁶⁸duty of the

67. Development Councils Act, section 35

68. ibid.

Pradeshiya Mandalaya to consider such recommendations and submit it to the Development Council or the Executive Committee of the Development Council⁶⁹ at the district level. It is the duty of the Development Council, or the Executive Committee of the Development Council to consider such recommendations as to the exercise, discharge and performance of the powers, functions and duties of the Pradeshiya Mandalayas, which signifies that the "grass-root" level decisions are directly "handled by" the Central Government or by officers of the bureaucracy at the district level. Hence, it could be said that although the object of the Government was to devolve authority by establishing Development Councils, still the decisions at the district level are taken by the Central Government and the decentralisation of administration, especially to grant the power in decision-making to the general public at the district level, has not been a success. The duty of the District Minister to notify any difference of opinion between him and the Executive Committee to the President further confirms the above argument. Sub-section 1 of section 61 of the Development Councils Act provides:

"Where any difference arises between the District Minister and the Executive Committee of the Development Council constituted for an administrative district regarding the application of the general policy of the Government to the district, it shall be the duty of such District Minister to bring such difference to the notice of the President."

Further the Act directs:

"Where such difference between a District Minister and the Executive Committee of the Development

69. ibid., section 17A 6(b).

Council constituted for such administrative district appear to the President to be irreconcilable he may dissolve such Executive Committee."⁷⁰

Thus, the above discussion demonstrates the fact that in theory the ultimate control of the Gramodaya Mandalayas ,Pradeshiya Mandalayas and the Development Councils is in the hands of the District Minister appointed by the Central Government. This was the main objection of the Tamil leaders with regard to the establishment of the Development Councils. Tamil leaders assert that the Development Councils have done nothing in their three years of existence to free the District Ministers from the central tutelage. Moreover, the functions which are carried out by the Central Government, at present, further clarifies the argument that by the establishment of the Development Councils, no changes took place in the local government administration of the country.

ii. The functions of the Development Councils

The most interesting feature with regard to the functions of the Development Councils is that they are not handling any of the important subjects such as education and health within their districts. In England most of the local authorities deal with matters which belongs to the categories of education, police, public health, highways, public order, sanitation , town and country planning and housing.⁷¹ Even the rural municipalities of India are concerned with duties such as education, sanitation and such State Government

70. ibid., section 61(2)

71. J.F. Garner, Administrative Law, 5th edition, London, Butterworths, 1979, pp. 466-468.

functions as registration of births, deaths and marriages.⁷²
According to the Development Councils Act, it is clear that the intention of the Government was to grant power to these councils, so that they may deal with important subjects such as education. The Act provides:

"The Executive Committee of a Development Council shall,

- a). in respect of all or any of the subjects specified in the First Schedule to this Act, consider the draft development proposals prepared by the appropriate Minister, formulate other proposals in consultation with the appropriate Minister, prepare an annual development plan incorporating all or any such proposals and submit such plan through the Minister to the Development Council for its approval."⁷³

The First Schedule to the Development Councils Act introduces fifteen subjects which could be handled by Development Councils. The subjects are: agrarian services, agriculture, animal husbandary, co-operative development, cultural affairs, education, employment, fisheries, food, health services, housing, irrigation works, land use and land settlement, rural development and small and medium scale industries. Thus, in principle it is clear that the Legislature had anticipated the Development Councils participation in carrying out the functions of these subjects. However, it should be noted that the Development Councils at present are not involved in any of these subjects. Although the Development Councils Act provides that the Development Councils are to carry out functions with regard to subjects such as education, it is evident that the Government has taken no measures to implement this scheme. For instance, according to the Regional Director

72. S. Humes and E. Martin, Structures of local government throughout the world, The Hague, 1961, p. 384

73. Development Councils Act, section 35(a).

of Education of the North Central Province, which is the biggest Education Region in the island,⁷⁴ by area, there has been no occasion where the Development Council was involved in educational administration.⁷⁵ Moreover, it is understood that up to date there have been no indications that the Development Councils are to undertake the local administration of education.⁷⁶ As pointed out in detail in Chapter Five, the administration of education remains solely as a subject of the Central Government, throughout the island.

Furthermore, it is clear that at present there are lots of problems with regard to the Development Councils, Pradeshiya Mandalayas and the Gramodaya Mandalayas. Mr. Lakshman Jayakody's (a Member of the Parliament-SLFP), statement in the Parliament could be pointed out as an example in this context.

"Mr. Speaker, we quite appreciate the submissions made by the Hon. Prime Minister with regard to the Development Councils and I wish to bring to his notice one or two matters which have brought a lot of work in our electorates to a standstill. I suppose it may be due to various reasons, and it may be without his knowledge or because of other reasons. First and foremost, I must tell you that I represent an electorate where we have no proper Chairman for the Gramodaya Mandalaya. I received a letter from Mr. Paskaralingam, who is the Secretary to the Ministry of Local Government saying that Mr. D.C. Wanigasundera of Urapola is the Chairman. But the person who is working there who is having a frank and so on, is a lady by the name of Rohini Perera. . . . But, I must say that the Hon. Prime Minister's Secretary has written to me saying that it is Mr. Wanigasundera. . . . Therefore we would like the Hon. Prime Minister to find out who these intruders are. We in the opposition especially would like to work with a person who has the interest of the area at heart, and who would like to serve the people as one

74. Personal interview, Wilson Bandaranayake Esqr, Regional Director of Education, North Central Province

75. ibid.

76. ibid.

of their own. So that is one thing that has taken place in our area."⁷⁷

Moreover, with regard to the functions of the Development Councils it is clear that in some of the areas even the day-to-day matters have not been carried out by Development Councils. For instance, a Member of the Parliament, once mentioned:

"Nevertheless, after walking through each and every village, road and canal sides of the Attanagalla electorate, it is very saddening to note the deplorable state of these places. You can't use the roads, because all the roads which were maintained by Village Councils prior to 1981, are now jungles. It is very saddening to note the situation of the area."⁷⁸

During recent years, it seems that the Development Councils are facing more and more problems. At present out of the twenty-four Development Councils only seventeen are functioning as the rest of the councils in the Northern and Eastern provinces are "paralysed" due to the fact that their District Ministers vacated the seats of the Parliament. So far no elections have been held to elect the members for these councils. Moreover, it is also clear that there have been instances where the District Ministers have declared that it is necessary for the Development Councils to make room for the Central Government to probe their accounts. For instance, in November 1985, the Kandy District Minister Mr. W. P. B. Dissanayake said that he would ask the Prime Minister to appoint a Committee to probe the accounts of the Kandy Development Council.⁷⁹

77. Hansard, 7th September 1983, p. 680

78. A translation from a speech made by Mr. Lakshman Jayakody in the Parliament, Hansard, 5th September 1983, p. 202

79. Ceylon Daily News, 5th November 1985.

Concluding remarks

Thus, it is significant that the establishment of Development Councils in the island, with the object of the devolution of the Government, has not been a successful attempt as was expected. Although the structure of these councils indicate that the administration is decentralised, the functions and duties of Development Councils demonstrate that they are not involved in any of the important Central Government affairs at the district level. The Development Councils were administratively not viable. Meanwhile, by the end of 1982 the reconciliations that had emerged, mainly after the introduction of Development Councils, between the majority Sinhalese and the minority Tamils, were deteriorating rapidly especially due to the weaknesses of the Development Councils. A cycle of violences began in the North and the Tamil political power gradually shifted in favour of militant, extremist groups in the north.⁸⁰ As a result of the legislation "for a united Republic", the TULF Members of Parliament had to vacate their seats. Due to the endless violence especially in the North and the East the Government organised a "round table" conference in the latter part of 1983 which continued till September 1984, and proposals were brought about for the implementation of Provincial Councils. The preamble to the draft District and Provincial Councils Bill stated that, the Act is:

"to provide for the establishment of District Councils and the Constitution of inter district

80. Sri Lanka, the ethnic conflict, op.cit. p.184

authoriitties to be called Provincial Councils with a view to strengthening and broadening the democraattic structure of Government and the democraattic rights of the people and strengthening nationaall unity by affording opportunities to the peoopple to participate at every level in nation llife and in Government"81

However, the Round Table Conference and the proposals for the establishment of Provincial Councils, faced an unfortunnaate and an unsuccessful ending. Yet the unsettled ethnic pproblems of the island which have been growing vehementllyy supply ample food for thought that the one and only soluuttion for this grave question lies in the devolution of Govveernment within a united island Republic. It is undoubtedllyy evident that the present structure and the practical aspect of Development Councils are unable to meet these ends. On the one hand, the Development Councils have too much inffllluence from the centre and, on the other hand, they are noott involved in any of the functions of the Central Governmenntt at the district level. Hence, it is essential that eiitther the present Development Councils should undergo thhee necessary changes to make provision for a devolution of tthhe Government or else a new Council should be established inn place of the Development Councils, however, with all the poweerrs and functions which will provide for a devolution of ggoovernmental functions with greater autonomy for the general ppuublic to participate in decision-making and plan implemennttation, to which we turn in the next Chapter.

81. Draft District and Provincial Councils Bill, Ceylon Daily News, 20th Decemmmber 1984.

Chapter Eleven

Conclusion; Sri Lanka, in search of a solution

In this thesis we have examined the devolution of Government, with special reference to the developments in the relationship between the Central Government and local authorities of Sri Lanka. Considering the Central Government controls over the local authorities, Rhodes's argument to the effect that the relationship between central and local government is moving from that of agency to one of partnership could be justified.¹

It is interesting to note, at this stage that the local authorities in Sri Lanka are weak and dependent institutions established within a centre-controlled frame work. Nonetheless, it is difficult to suggest that the Government is making any attempt to develop its system of local government. However, it is a clear fact that at present the Sri Lankan Government is facing a crucial problem of ethnic diversity. Hence, the lack of enthusiasm of the Government in developing the system of local government of the country is understandable. Nevertheless, it is significant to note, as this Chapter will point out, that if there is a solution for this long standing, grave problem, that it is only through a revised system of local government of the country. Thus, in this Chapter, we will first be examining the present problem of the country from the legal point of view, followed by an analysis of the present status

1. Supra, Chapter Five.

of the local government system of the island. In the final part, accordingly, we will put forward some of the proposals which the Government could implement as a solution not only in relation to the current problem of the country, but also to develop the relations between the Central Government and local authorities in Sri Lanka, successfully.

I. The question of ethnic diversity

From the legal point of view, it could be argued that the present problems in the country are largely based on the demands for autonomy by the minority Tamil group, which comprises 12% of the fourteen million population of the country. All the allegations which have been made, whether true or false, of discrimination in employment and educational opportunities, of social discrimination or of allegedly unfair treatment of some kind of the Tamil population, point out the fact that autonomy is a fundamental aim as solution to the ethnic rifts between the Sinhalese majority and the Tamil minority of the island.

Accordingly, during recent times the Tamil separatist demands have been vehement. A number of groups of Tamil extremists at present are fighting for a separate state in the Northern and Eastern provinces of Sri Lanka and have declared that they would even resort to the use of force to establish such a state. During the past two years the Jayawardene Government has taken several measures

to combat terrorism, which however, ended unsuccessfully. For instance, the Round Table Conference, which aimed at establishing Provincial Councils in the island, and the "Thimpu talks", which were held in Thimpu, the Capital of Bhutan in July/August 1985 with the assistance of the Indian Government, apparently had no effect on the growing terrorist activities in the island. The violence especially in the Northern and Eastern provinces, is gradually increasing and for this reason most of the important services in these areas have come to a standstill. People are fleeing from these areas and at present the most important duty of the Government Agents in these provinces is to run refugee camps for Sinhalese as well as for Tamils. Most of the schools are closed down and other important services, such as health and transport in these areas are mostly "paralysed". While the people of the country, especially of the Northern part of the island are facing these problems, the Government is faced with a different type of a crisis. During recent years the economy has deteriorated alarmingly. The Government is compelled to give much thought to the increasing violence in the Northern and Eastern provinces instead of pursuing new proposals for the development of the country. As a result, in the next years' budget proposals, announced in November 1985, the Finance Minister has proposed to increase the prices of almost everything to balance the budget deficit of over twenty-six million Rupees. These few points, emphasise that it is essential to find a solution for the ethnic confrontation

between the Sinhala majority and the Tamil minority of Sri Lanka.

Nevertheless, it is important to mention that the proposals put forward in this Chapter, as a solution for the diversities between the Sinhalese and the Tamils, are only based on legal concepts and not on the political idealism. Moreover, it is important to note that any solution for this problem should be based within the constitutional provision of an "united Republican island nation". On these lines it will be argued that the only possibility of a solution for this problem is through the development of the institutions of local government in the island.

II. The system of local government

An overall analysis of the structure and functions of the system of local government reveals that the problems which are faced by the Government at present are due to the weaknesses of the present system of local government. Generally, the local government institutions could play a major role in linking the districts and provinces with the Central Government, while maintaining a certain amount of autonomy within the local councils. This enables the local authorities to function as partners of the Central Government, keeping the authority within them to take decisions in relation to important matters in their areas. However, when these factors are taken into

consideration it is clearly seen that the Sri Lankan local government institutions are not autonomous bodies. It is important to note that these local authorities are weak institutions, without any power to take decisions at the district level or to function as partners of the Central Government. For this reason it is justifiable to observe that local authorities in Sri Lanka are in the "doldrums", as was observed by Mrs. Ursula Hicks as far back as in 1957. As she pointed out, the local authorities have not "caught fire" due to its weaknesses in many respects, but especially, due to two important factors. On the one hand, it is apparent that the Sri Lankan local authorities are not empowered to carry out any of the important functions. Since 1856, until 1980, no local authority had the powers to get involved with matters such as education, health, police or irrigation. The local government institutions were allocated with duties such as roads, markets, water supply schemes and sanitation. In fact during recent years it is clear that the Central Government has been taking over some of the functions which were within the authority of the local councils. For instance, until the mid-1970s the distribution of electricity was handled by the local authorities of the island, but during recent times this function is being taken over, in certain instances, by the Ceylon Electricity Board, which is directly controlled by the Central Government. Thus, when compared with the functions of the local authorities in England, it is clear that the local government institutions

are in a very weak state. In England, as we have seen, the local authorities play a major role in carrying out many important duties, such as education, health services, police service, housing, town and country planning and so on. The whole system of school education is remarkably maintained mainly by the local authorities. Although, it is debatable whether such high standards could be maintained by the local authorities in Sri Lanka, this comparison emphasises the fact that the local government institutions of the country are not endowed with important duties. Moreover, it could also be argued that the Central Government has no interest in allocating these extra duties to the local councils. The duties which were allocated to Development Councils in theory, and the functions they are involved with at present in practice, could be pointed out as an example in this respect. As has been discussed in Chapter Ten, under the Development Councils Act, No. 35 of 1980, fifteen subjects, such as agrarian services, agriculture, animal husbandry, co-operative development, cultural affairs, education, employment, fisheries, food, health services, housing, irrigation works (which are not of an inter-district character), land use and land settlement, rural development and small and medium scale industries were allocated to the Development Councils. However, in practice, up to date no Development Council in the island is involved with any of the above mentioned subjects.

Moreover, added to this fact, it is relevant

to note that, in Sri Lanka the local authorities are generally under the control of the Central Government. As discussed in the previous Chapters, it is clear that during recent years, and especially after independence, the development of local authorities has been on the lines of the "centre-controlled" Councils. Even prior to 1948, under Colonial rule, it is difficult to identify a different trend in the development of local government. The Governments, Colonial and national, have been "experimenting" over one hundred years as to what sort of local government institutions they should introduce to the island, however, without much success. Thus, during the period 1856 to 1948, a variety of local government institutions were functioning in the island however, based on the same type of a formula. The most noteworthy feature in all the Councils was that they were dependent bodies of the Central Government.

The dependency was based on many factors. Firstly, the authorities were not financially independent. The country, belonged and still belongs to the category of "developing nations" and depends on aid for development schemes from the developed countries to a certain extent. The local authorities, on the other hand, have to depend mostly on Government assistance granted in the form of grants and loans. The independent local authority income, as has been discussed in detail in Chapter Eight, is very limited. The main sources are taxes and licence duties which do not contribute a sufficient amount for the

Councils to carry out their day-to-day affairs. For this reason the local authorities would generally be left with a large budget deficit if it were not for the grants and loans obtained from the Central Government. Hence, it could be pointed out that, the unstability in finance is a major drawback preventing the local authorities functioning as autonomous bodies, as this has made provision for the Central Government to control these local government institutions.

Meanwhile, this has made it possible for the Central Government to impose financial sanctions over the local authorities. If the Central Government is not satisfied with the services run by the Councils, the Government could always reduce the grants and loans allocated to a particular Council or even go to the extent of refusing any such allocation at all.

In addition to the financial controls carried out by the Central Government, the Minister of Local Government too could, control the local authorities in various ways and under various circumstances. Out of these "authoritative powers" the most important are the authority of the Minister to dissolve local Councils and to remove the Chairmen and the councillors. As discussed in Chapter Six, this provision has made the local authorities to act under the control and supervision of the Minister of Local Government. It must not be forgotten that in addition to these controls the Commissioner and the Assistant Commissioner

of Local Government too are empowered to supervise the local authorities.

Nonetheless, all these factors, clearly points out that the local government institutions in Sri Lanka are on the one hand under the control of the Government and on the other hand that they are allocated only with limited amount of duties. A weak system of local government has been the ultimate result of these factors. Moreover, it is apparent that in the country the power is centred within the Central Government and there has been no provision for self-governing institutions.

Under these circumstances, it is clear that the local authorities are non-autonomous bodies and that they function more or less under the control of the Central Government. Moreover, it is significant that local authorities have no important role in the administration and that the powers of the Central Government are not distributed to the people at the regional or district level.

Thus, it could be argued that this prevailing relationship between the Central Government and local authorities of the country signifies the reason for the present problems as well as the solution for it. It should be noted, that Sri Lanka, is a multi-national and a multi-religious nation. Within the space of 25,332 sq.miles, fourteen million people, who belong to different races, such as Sinhala, Tamil, Muslim, Burgher and Malay and who are of different religious concepts such as Buddhists, Hindus, Catholics, Christians and Muslims live together

under a centralised Government. It is worthy to note, that even in mid-1920s, the leaders of the country were aware that under such circumstances a centralised form of Government would create problems. For instance, Mr. S.W.R.D. Bandaranaike, addressing a Students' Congress, on 14th July 1926, had pointed out:

"There would be trouble if a centralised form of Government was introduced into countries with large communal differences."²

Thus it is clear that, at present, what is necessary for the improvements in the relations between the Central Government and local authorities of the country, as well as for a solution for the prevailing ethnic conflict in the island, is a devolution of the Government to decentralise the administration and to devolve authority to the provinces or to the districts in the island.

III. The proposed solution

It is important to note that any of the reforms taken in relation to local and Central Government should be within the limits of a "united Republic". However, it could be said that within the four corners of this concept a devolution of Government could be safely accommodated. A devolution of Government will on one hand solve the problems with regard to central-local relations, enabling the local authorities to become the partner of the Central Government, moving from the rather rigid position of acting under the control of the Central Government.

2. Ceylon Mirror Leader, 18th July 1926.

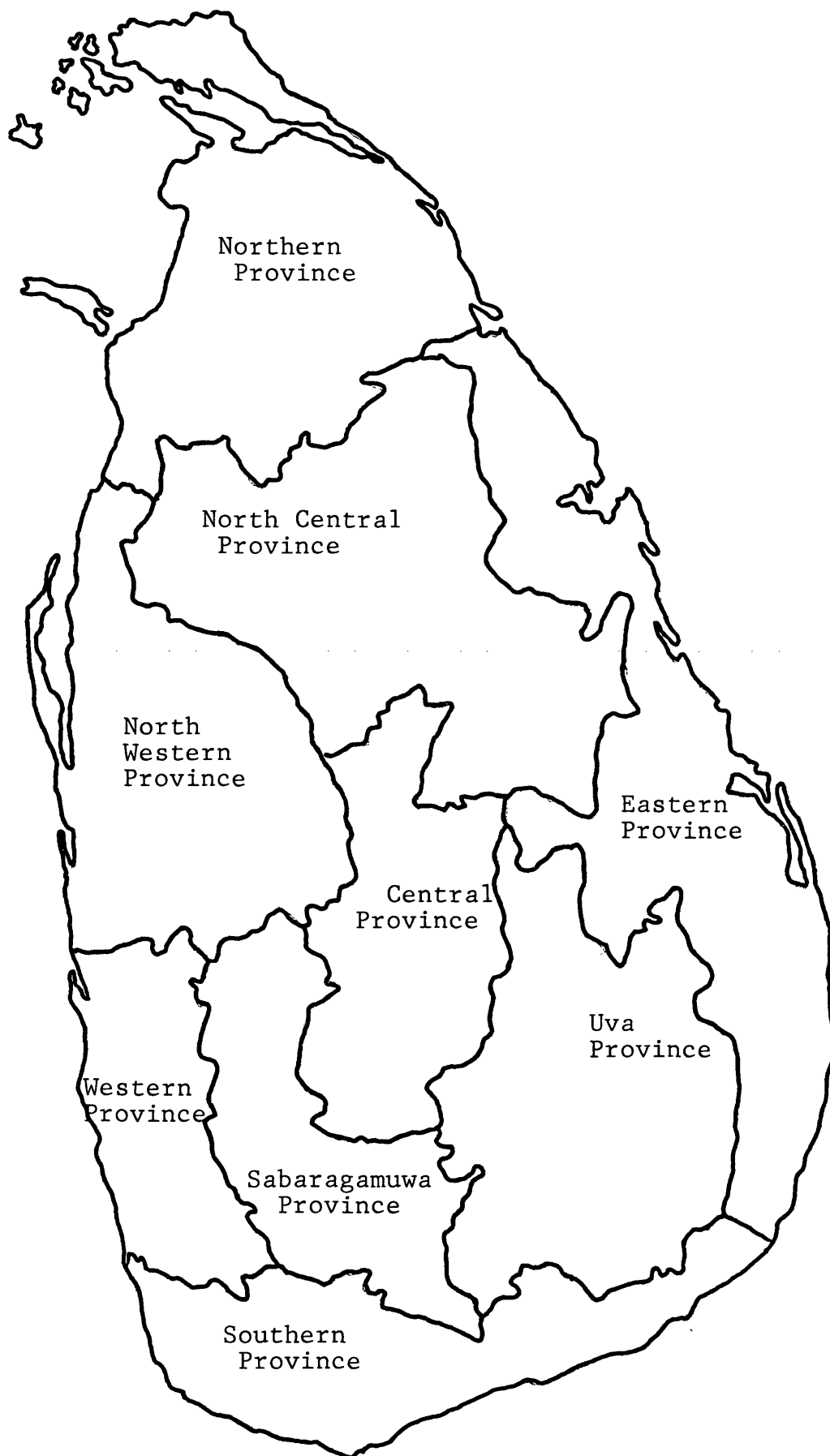
On the other hand, the devolution of Government will be a solution for the prevailing ethnic confrontation of the country. As pointed out earlier, the main problem of the Tamil ethnic minority is that they have "no say" with regard to Governmental functions and Governmental policies. If a devolution is effectively carried out this will enable the Tamil minority living in Northern and Eastern provinces to play an active part in the decision-making process with regard to the important and essential functions in their areas. Furthermore, this will enable them to participate in organising the essential services within their regions. Within this framework it is possible to point out the following measures which will pave the way not only for a cessation of ethnic conflict, but also to develop the prevailing relations between the Central Government and local authorities of the country.

As pointed out earlier, the fundamental issue which should be taken into account in relation to the developments in local government is the autonomous states of local Councils. What is actually needed at present is more independence from the Central Government and for this purpose, it is essential either to introduce Provincial Councils to the island or to grant more autonomous powers to the present Development Councils.

There are a few points however, to be mentioned in favour of the establishment of Provincial

Councils. As Map IV, illustrates, there are only nine provinces in the island and this will provide the feasibility of establishing a three tier structure of local government while making provision for a larger area for each Council. A Regional Council such as the Pradeshiya Mandalaya ,which at present functions under the Development Council, could be the smallest institution under this structure and the Development Councils based in the districts, could constitute the middle tier. At the highest level in the provinces, Provincial Councils could handle the decision-making and plan implementation, while communicating with the Central Government whenever it is necessary.

Nonetheless, if the Provincial Councils are to be established it is necessary that the Chairmen and the councillors should be elected representatives of the people. Secondly, it is important that these Councils should have the power of decision-making at the Provincial level, with regard to their functions. Thirdly, these Provincial Councils should be empowered to carry out some of the important services of the Government. Finally, provision should be made for a good system of local government to be carried out in the country which would maintain a relationship of a partnership with the Central Government. Hence, with regard to this last factor, it is essential that some type of supervision is necessary to maintain the quality of the work carried out by the local



Map IV - The Provinces of Sri Lanka

Source: Department of Information, Colombo

Councils. Thus, the question arises as to what type of supervision the Government should have over the local authorities? In other words what are the conditions that should be imposed over the Provincial Councils?

It must be noted that it is highly important to sustain the unity of the country as well as to maintain an effective system of local government. Hence, it is clear that the Central Government should have the power to "supervise" the work of these Councils. Thus, it could be pointed out that what is needed at present in relation to Sri Lanka is "democracy within bureaucracy". Hence it could be said that the re-organization of the structure of local government either by establishing the above mentioned Provincial Councils, or by re-establishing the present Development Councils with the necessary amendments mentioned in Chapter Ten, will be a justifiable answer for this question. What is important in this respect is to create a relationship of partnership between the Central Government and local authorities of the country, so that the people at provincial level will retain the much needed democracy with them.

With regard to these proposals, it could be suggested that the Indian "Panchayat Raj" system discussed in Chapter Ten could be taken as a model for the re-organisation of the local government system in Sri Lanka. If this re-organisation is efficiently carried out, this will enable

the local authorities not only to combine democratic viability with efficiency in administration, but also to decentralise the administration granting more powers to the local government institutions of the country.

In accordance, to these re-organisations, it is essential that some of the preliminary steps have to be taken. The most important question is with regard to the finance. It is apparent that this is the weakest in a weak system of local government. Hence, firstly, it is essential that steps should be taken to improve the financial position of the local authorities. For this purpose it is essential not only to introduce new sources of revenue, such as new taxes, but also the taxing authority should be given to the Councils. This will enable the Provincial Councils to recommend taxes on the imposition of a higher rate within their territories. However, it is clear that the Central Government grants will have to continue. As A.H. Marshall pointed out:

" . . . however, successful local authorities may be in finding new sources of local revenue grants will continue to be of paramount importance. The future of local government will be greatly influenced by the role they play."³

Thus the Central Government grants will have to continue to support the Provincial Councils and this would avail the opportunity not to control the local authorities, but to keep them under the supervision of the Central Government.

3. A.H. Marshall, Local Government Finance, The Hague, 1969, p. 27.

Moreover, the judiciary could play a major role with regard to the supervision of local authority functions, and with the development of the process of judicial review in Sri Lanka discussed in Chapter Seven, an impartial control could be carried out over the local authorities.

Accordingly it is suggested that as a solution for the prevailing problems in the country and in the local government structure, the re-organisation of Development Councils or the establishment of Provincial Councils, however, with autonomous powers, will be a satisfactory solution. However, the success of these proposals will mainly depend on the amount of autonomy granted to these Councils and the ability of the Provincial level leaders to organise and carry out these important services. Nonetheless, one more point could be mentioned before we conclude. According to the experience in Sri Lanka, it is vitally important to introduce a democratic Council that should function autonomously within the bureaucracy with the relationship of partnership between the Councils and the Central Government.

Abbreviations

A.C.	Appeal Cases (House of Lords and Judicial Committee of the Privy Council)
A.E.R.	All England Reports
C.L.W.	Ceylon Law Weekly
Cmd.	Command Papers
C.O.	Colonial Office Section of Papers in the Public Record Office, London
col.	column
D.C.	Development Council
F.P.	Federal Party
G.A.	Government Agent
G.C.E.C.	Greater Colombo Economic Commission
ibid.	ibidem (in the same book, case, report etc.)
J.R.A.S.C.B.	Journal of the Royal Asiatic Society, Ceylon Branch
L.G.R.	Local Government Review
L.Q.R.	Law Quarterly Review
M.C.	Municipal Council
M.L.R.	Modern Law Review
N.L.R.	New Law Report
op.cit.	opere citato (in the work cited)
P.C.	The Judicial Committee of the Privy Council
S.C.	Supreme Court
S.C.C.	Supreme Court Circular
S.L.F.P.	Sri Lanka Freedom Party
S.P.	Sessional Paper
S.S.R.C.	Social Science Research Council

T.C.	Town Council
T.U.L.F.	Tamil United Liberation Front
U.N.P.	United National Party
V.C.	Village Council
Vol.	Volume:
W.L.R.	Weekly Law Report

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